TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted]90

BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR GRAIN COMPANY, GEORGE A. HELLMAN, ET AL., PETITIONERS,

vs.

S. E. JOHNSON, TRUSTEE IN BANKRUPTCY OF WILSON B. HENDERSON.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

(29,063)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 513.

BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR GRAIN COMPANY, GEORGE A. HELLMAN, *ET AL.*, PETITIONERS,

vs.

E. H. JOHNSON, TRUSTEE IN BANKRUPTCY OF WILSON F. HENDERSON.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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1 In the United States Circuit Court of Appeals for the Seventh Judicial Circuit.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al.,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Petition for Review under Section 24b of the Bankrupt Act.

Filed Aug. 12, 1921.

To the Honorable Judges of said Circuit Court of Appeals:

Your petitioners, Board of Trade of the city of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., bring this petition for review against E. H. Johnson, who was duly appointed by the District Court of the United States for the Northern District of Illinois, Eastern Division (and is now acting) trustee in bankruptcy of the Estate of Wilson F. Henderson, who had been theretofore and on the 24th day of February, 1920, adjudged a bankrupt by said court, and represent:

1. Said Board of Trade of the city of Chicago is a corporation existing under a special charter granted to it by the state of Illinois, and it is under said charter maintaining a commercial exchange in the city of Chicago; that said Armour Grain Company is a corporation engaged in the purchase and sale of grain and is, under the rules of said Board of Trade, entitled to all the rights and privileges accorded to individual members of said Board; that said George S. Bridge and John R. Leonard are members of said Board of Trade and transacting business thereon as Bridge & Leonard; that James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller are members of said Board and transacting business thereon as James E. Bennett & Co.; that George A. Hellman is a member of said Board and transacting business on said exchange;

2. That on the 24th day of January, 1920, a petition was filed in said District Court of the United States for the Northern District of Illinois, Eastern Division, to have one, William F. Henderson, adjudged a bankrupt, and that thereafter and on the 24th of
2 February, 1920, said court, did adjudge said Henderson a bankrupt, and that on the 30th day of March, 1920, E. H. Johnson was, at the first meeting of creditors, duly appointed trustee in bankruptcy of the estate of said Wilson F. Henderson; that on, to-wit, the 10th day of June, 1920, said Johnson as trustee filed in

said District Court his petition alleging that said Wilson F. Henderson was a member in good standing of said Board of Trade of the city of Chicago, that said membership was of the approximate value of ten thousand five hundred ($10,500) dollars, and praying that said Board of Trade show cause why said membership of said Henderson should not be transferred to said trustee and why he should not be allowed to transfer the same free from any claims of certain members of said Board of Trade; and these petitioners ask that the copy of said petition contained in the transcript of record of the said District Court herewith filed in this court be treated as a part of this petition as fully as if the same were herein fully set out.

3. That on the 10th day of June, 1920, an order was entered by said court pursuant to the prayer of said petition. That on the 16th day of June, 1920, said Board of Trade in answer to said rule to show cause filed its plea to the jurisdiction of said District Court upon the ground that said petition created a controversy in bankruptcy as distinguished from a proceeding in bankruptcy and that said Board of Trade objected to the exercise by said court of jurisdiction of said petition, a copy of which plea to the jurisdiction is contained in said transcript of record herewith filed, and these petitioners ask that it may be treated as a part of this petition as fully as if set forth herein in full; that on the 2d day of May, 1921, said court overruled said plea; that on the 25th day of July, 1921, your petitioners, Armour Grain Company, George A. Hellman, George S. Bridge and John R. Leonard, James E. Bennett, Frank J. Saibert, Frank F. Thompson, and Frank A. Miller, filed their plea the jurisdiction of said court upon the same grounds alleged in said plea of the Board of Trade to said jurisdiction, a copy of which plea is also included in the transcript of record of the said District Court, and your petitioners ask that it be treated as a part of this petition as fully as if set forth herein in full; that on the 25th day of July, 1921, said court entered its order overruling said plea; that on the 25th day of July, 1921, said Johnson, Trustee, by leave of court, filed an amendment and supplement to his said petition, averring that your petitioner,
3 said Bridge & Leonard, had on June 17, 1921, instituted a proceeding before the Board of Directors of said Board of Trade to have said Henderson suspended from the privileges of membership, and also making Armour Grain Company, George A. Hellman, Bridge & Leonard, and James E. Bennett & Co. as parties respondent to his said petition, a copy of which amendment and supplement is contained in said transcript of record, and these petitioners ask that the same may be treated as a part of this petition as fully as if herein set forth in full; that on the 25th of July, 1921, the Board of Trade filed its answer to said amended petition of said trustee, and on the same date your petitioners, Armour Grain Company, George A. Hellman, George S. Bridge and John R. Leonard, James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, also filed their answer to said petition of said trustee, copies of which answers are contained in said transcript, and these, your

petitioners, ask that the same be taken as a part of this petition as fully as if set forth at length herein.

4. That thereafter the said proceeding came on for final hearing in said District Court upon said petition as amended and answers 1921, entered in said court a final order granting the prayer of said (as upon bill and answer), and said court on the 27th day of July, petition, a copy of which order appears in the transcript of record made an exhibit to this petition, and your petitioners ask that such order may be regarded as a part of this petition as fully as if set forth at length herein.

5. That said District Court in entering said order and finally disposing of said proceedings erred in the following respects:

(1) In overruling and not sustaining the pleas to the jurisdiction of this court as set forth by these respondents, and in not dismissing said petition for want of jurisdiction;

(2) In holding the membership of the bankrupt, Wilson F. Henderson, to be property within the meaning of the Bankrupt Act, and in also holding that said membership now belongs to the said E. H. Johnson as trustee in bankruptcy;

(3) In adjudging that Wilson F. Henderson had full power and right on January 24, 1920, to transfer his said membership to any person eligible for membership in said Board;

(4) In adjudging that on January 24, 1920, there were no claims or objections filed or pending, based upon outstanding, un-
4 adjusted or unsettled claims or contracts, and that said membership was not in any way impaired or forfeited;

(5) In holding that upon the appointment of E. H. Johnson as Trustee of said bankrupt he became the owner and holder of said membership for the purpose of transfer and disposition thereof;

(6) In adjudging that the claims against Lipsey & Company set out in the answer of said Board of Trade do not constitute outstanding, unadjusted or unsettled claims or contracts against said Henderson proper to be filed as objections to the transfer of his membership at any time;

(7) In adjudging that no such claims or objections had been filed prior to the petition in bankruptcy of said Henderson on January 24, 1920;

(8) In holding that the claim of the Board of Trade Clearing House did not constitute a valid claim or lien against the transfer of said membership;

(9) In adjudging that after the adjudication of bankruptcy and the appointment of said trustee, said Henderson ceased to be a member of said Board of Trade and that his membership by operation of law passed into said trustee;

(10) In adjudging that the proceedings for the suspension of s Henderson filed on June 17, 1921, were unavailing and invalid a did not constitute an impairment of said membership as against s trustee;

(11) In adjudging that said membership of said Henderson n belongs to said trustee free and clear of any claims, objections, li or otherwise under the rules of the Board of Trade of the City Chicago, and that said trustee should hold same for sale and trans for the benefit of said estate free and clear of any claims, objectio impairment or otherwise as against said Henderson;

(12) In adjudging that the claims of these respondents were valid as against the membership of said Henderson and the rig of said Johnson as trustee;

(13) In entering the decree ordering that respondent, Board Trade of the City of Chicago, disallow and refuse to recognize any purpose as against said trustee the said claims mentioned in s answer of the respondent, Board of Trade, and in ordering that s Board of Trade shall not allow any other claims or proceedings objections, liens or otherwise against said trustee upon or against membership of said Henderson;

(14) In directing said Board of Trade to disregard a
5 dismiss the proceedings of the respondent, Bridge & Leona for the suspension of said Henderson and take no action said proceedings which would impair or forfeit that membership

(15) In ordering the Board of Trade to permit the transfer of s membership upon the application of the trustee but of no other p son;

(16) In ordering said trustee to sell and dispose of said memb ship for the benefit of said estate;

(17) In directing the Board of Trade to recognize, accept a enter upon its records said E. H. Johnson, Trustee, as the owne said membership of said Henderson;

(18) In not dismissing the petition of the trustee.

Your petitioners file herewith a duly authenticated transcript the proceedings above mentioned in said District Court and ask t the same be taken and treated as an exhibit to this petition.

Wherefore, your petitioners pray that this court may review, revise and reverse said order of said District Court and direct said District Court to dismiss said petition of said Johnson.

BOARD OF TRADE OF THE CITY OF CHICAGO,
ARMOUR GRAIN COMPANY,
GEORGE A. HELLMAN,
GEORGE S. BRIDGE,
JOHN R. LEONARD,
JAMES E. BENNETT,
FRANK J. SAIBERT,
FRANK F. THOMPSON,
FRANK A. MILLER,
By ROBBINS TOWNLEY & WILD,
Their Solicitors.

(Endorsed:) No. 3028. In the United States Circuit Court of Appeals for the Seventh Judicial Circuit Board of Trade of the City of Chicago, a corporation, et al., vs. E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson. Petition for Review. Filed Aug. 12, 1921. Edward M. Halloway, Clerk. Robbins, Townley & Wild, 105 South La Salle street, Chicago.

6 *Placita.*

EXHIBIT TO PETITION TO REVIEW AND REVISE.

Filed Aug. 22, 1921. Edward M. Halloway, Clerk.

Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on 29th day of July, in the year of our Lord one thousand nine hundred and 21, being one of the days of the regular July Term of said Court, begun Monday, the 4th day of July, and of our Independence the 146th year.

Present:

Honorable Kenesaw M. Landis.
John J. Bradley, U. S. Marshal.
John H. R. Jamar, Clerk.

Creditors' Petition Filed Jan. 24, 1920.

In the District Court of the United States, Northern District of I
nois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Be it remembered that heretofore, to-wit: on the 24th day of Ja
uary, 1920, came the Trustee of the above named Bankrupt and fi
his petition, as follows:

Form No. 3.

Creditors' Petition.

To the Honorable —— ——, Judge of the District Court of t
United States for the Northern District of Illinois:

The Petition of M. W. Chouinard respectfully shows:

That Wilson F. Henderson, of Chicago Illinois, has for the grea
portion of six months next preceding the date of filing this petitio
resided at Chicago, in the County of Cook, and State and Distr
aforesaid, and owes debts to the amount of $1,000.

7 That Your Petitioner is a creditor of said Wilson F. H
derson having provable claims amounting in the aggrega
in excess of securities held by them to the sum of $500. That t
nature and amount of your petitioner's claim is as follows: A ju
ment in the Circuit Court of Cook County for the sum of $1,500.
and costs on which there is a balance due of over Six Hundred D
lars $600.00.

And Your Petitioner Further Represents that said Wilson F. H
derson is insolvent, and that within four months next preceding t
date of this petition the said Wilson F. Henderson committed an
of bankruptcy, in that he did heretofore, to wit, on the 22nd day
December A. D. 1919 and on various other dates allow Executi
to be returned against him, unsatisfied.

And your Petitioner further represents that said Wilson F. H
derson has less than 12 Creditors.

Wherefore Your Petitioners Pray- that service of this petition, w
a subpœna, may be made upon Wilson F. Henderson, as provided
the acts of Congress relating to bankruptcy, and that he may be
judged by the Court to be a bankrupt within the purview of s
acts.

M. W. CHOUINARD,
Petitioner

JULIUS A. QUASSA,
Attorney.

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*Insert here the words "had his principal place of business" or "resided"
"had his domicile."

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

M. W. Chouinard being *three* of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by them are true.

Before me, —— ——, this 22nd day of January 1920.
[SEAL.] MAY F. MONAHAN,
Notary Public.
(Official Character.)

[Schedules to be annexed corresponding with schedules under Form No. 1.]

(Endorsed:) Filed Jan. 24, 1920, John H. R. Jamar, Clerk.

(Endorsed:) Docket No. 28256. United States District Court, Northern District of Illinois, In Bankruptcy. In the Matter of Wilson F. Henderson of Chicago, County of Cook, State of Illinois. Creditors' Petition. Filed Jan. 24, 1920, at 11.20 o'clock A. M. John H. R. Jamar, Clerk. Julius H. Quassa, Attorney for Petitioner.

8 *Order of Adjudication of Feb. 24, 1920.*

And on to-wit: the 24th day of February, 1920, there was entered the following order of Adjudication, in words and figures following to-wit:

In the District Court of the United States for the Eastern Division, Northern District of Illinois.

Tuesday, February 24, A. D. 1920.

Present: Honorable Kenesaw M. Landis, District Judge.

In Bankruptcy.

No. 28256.

In the Matter of WILSON F. HENDERSON, Bankrupt.

At Chicago, in said District, on the 24th day of February, A. D. 1920, before the Honorable —— ——, Judge of said Court in Bankruptcy, the petition of M. W. Chouinard that he be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said Wilson F. Henderson is hereby declared and adjudged a bankrupt accordingly.

Order of Apr. 1, 1920, Approving Trustee's Bond.

Order Approving Trustee's Bond.

At a Court of Bankruptcy Held in and for the Northern District of Illinois, at Chicago, This 1st Day of April, 1920.

Before Sidney C. Eastman, Referee in Bankruptcy.

In the District Court of the United States for the Northern District of Illinois.

In Bankruptcy.

No. 28256.

In the Matter of WILSON F. HENDERSON, Bankrupt.

It Appearing to the Court that Elwyn H. Johnson of Chicago, and in said district, has been duly appointed trustee of the estate of the above named bankrupt, and has given a bond with sureties for the faithful performance of his official duties, in the amount fixed by (1) the creditors, to wit, in the sum of One Hundred dollars,
9 it is ordered that the said bond be, and the same is hereby, approved. SIDNEY C. EASTMAN,
Referee in Bankruptcy.

(Endorsed:) Filed April 2, 1920, John H. R. Jamar, Clerk.

Petition of Trustee.

Filed June 10, 1920.

And on to-wit: the 10th day of June, 1920, there was filed in the Clerk's office of said court a certain Petition, in words and figures following to-wit:

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the District Court of the United States, Northern District of Illinois.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

The petition of E. H. Johnson of the City of Chicago, Cook County, Illinois, respectfully represents that heretofore, on to-wit:

(1) Here insert the words "the creditors," or "order of the court."

the 24th day of January, 1920, an involuntary petition in bankruptcy was filed in this court against the above named Wilson F. Henderson; that thereafter on the 24th day of February, A. D. 1920, said Wilson F. Henderson was duly adjudicated a bankrupt and the matter was referred to the Honorable Sidney C. Eastman, one of the referees in bankruptcy in and for said District; that at the first meeting of creditors duly called and held in said matter on the 30th day of March, 1920, your petitioner was duly elected trustee of said Wilson F. Henderson, qualified in all things as such, and has ever since said time, and still is, the duly elected, qualified and acting trustee of said estate.

Your petitioner further shows that during all of the time and times hereafter stated, the Board of Trade of the City of Chicago was a duly incorporated and existing corporation organized under and by virtue of the laws of the State of Illinois and doing business in the City of Chicago, County of Cook and State of Illinois; that on
10 to-wit: the first day of November, 1899, the above named Wilson F. Henderson was duly elected a member of the Board of Trade of the City of Chicago and was at the time of the filing of said petition against him and of his adjudication in bankruptcy and of the election of your petitioner, as aforesaid, a member in good standing of the said Board of Trade of the City of Chicago.

Your petitioner further shows that said Board of Trade of the City of Chicago, as it was authorized and empowered by its charter to do, from time to time, adopted rules and regulations governing its members and membership therein and the transfer thereof; that among such rules and regulations duly in force at the time of said petition and adjudication and the election of your petitioner, there were the following which are all of the rules and regulations of said Board applicable or material to the matters herein involved, to-wit:

Rule X.—"Section 1. All applications for membership in the Association shall be referred to the Committee on Membership, who shall hold regular stated meetings for examing such applicants and their sponsors, in person, under such rules and regulations as may be made by the Board of Directors. Any male person of good character and credit, and of legal age, on presenting a written application, indorsed by two members, and stating the name and business avocation of the applicant, after ten days' notice of such application shall have been posted on the bulletin of the Exchange, may be admitted to membership upon approval by at least ten (10) affirmative ballot votes of the Board of Directors; provided, that three negative ballot votes are not cast against such applicant, and upon payment of an initiation fee of twenty-five thousand dollars, or on presentation of an unimpaired or unforfeited membership, duly transferred, and by signing an agreement to abide by the Rules, Regulations and By-laws of the Association, and all amendments that may be made thereto."

"Section 2. Every member shall be entitled to transfer his membership when he has paid all assessments due, and has against him no outstanding unadjusted or unsettled claims or contracts held by

members of this Association, and said membership is not in any way impaired or forfeited, upon the payment of two hundred and fifty dollars, to any person eligible to membership who may be approved for membership by the Board of Directors, after due notice by
11 posting, as provided in Section 1 of this rule. The membership of a deceased member shall be transferable in like manner by his legal representative without the payment of the transfer fee. Prior to the transfer of any membership, application for such transfer shall be posted upon the Bulletin of the Exchange for at least ten days when, if no objection is made, it shall be assumed the member has no outstanding claims against him * * *."

Rule XXII.—"Sec. 11. No member shall give the name of a corporation as his principal on any trade or contract in any of the commodities bought and sold on this Exchange, as enumerated in Sections 4 and 5 of Rule XIV, unless two executive officers of such corporation, bona fide and substantial stockholders, are members of this association in good standing. In case the said corporation is accepted as a party to such trade or contract and defaults in the execution of the same, or fails to comply with the terms of any business obligation made in conformity with the rules and regulations of this Association on which the said corporation has become liable, the said executive officers, and such other officers and managers of such corporation as are members of this Association, shall be subject to be disciplined in the same manner as they are subject to be disciplined for failure to comply with the terms of any business obligation of their own."

That no rule exists giving to said Board of Trade or its members the right to compel sale or other disposition of memberships to pay debts of particular members, or reserving to said Board of Trade or its members any right of application of a membership against the will of a member, for the benefit of his creditors; that the only right of one member upon a claim against another member under the rules of the Board of Trade is to prevent the transfer of the membership of such debtor member until such claim is settled, by the filing of an objection to such transfer.

Your petitioner further shows that the membership of said Wilson F. Henderson has been since the 24th day of January, 1920, and still is, of the approximate value of ten thousand five hundred dollars ($10,500), as your petitioner is informed and believes, and was not at said time in any way impaired or forfeited; and all assessments then due on said certificate *has* been paid.

Your petitioner further shows that pursuant to application duly made and signed by the said Wilson F. Henderson to the
12 said Board of Trade of the City of Chicago, notice and application for a transfer of his membership was posted upon the Bulletin of the Exchange on or about to-wit: May 1, 1919; that pursuant thereto and within ten days thereafter, certain claims, objections, or charges were made and filed against the said Wilson F. Henderson and against the transfer of said membership, but, as your petitioner is informed and believes, all such claims, objections or

charges were disposed of, or withdrawn prior to the said 24th day of January, 1920, so that upon said day, there were pending no outstanding unadjusted or unsettled claims or contracts held by members of said association which had been filed with said association within ten (10) days after the posting of such application for transfer; that on said day there was, however, in the hands of the officers of said association a certain claim or objection filed, as your petitioner is informed and believes, on the 27th day of May, 1919, by and in favor of the Board of Trade Clearing House, in the sum of five dollars and five cents ($5.05).

Your petitioner further shows that subsequent to said 24th day of January, 1920, to-wit: on the 29th day of January, 1920, there were, as your petitioner is informed and believes, filed with and received by the said Board of Trade of the City of Chicago, and after knowledge by it of the filing of said involuntary petition of bankruptcy, three objections to the transfer of the membership of said Wilson F. Henderson respectively by and in favor of Armour Grain Company, George A. Hellman and J. E. Bennett & Co. said to be creditors of Lipsey & Co., a corporation, of which the said Wilson F. Henderson was an officer and director; that the said objections were not on account of any indebtedness due from the said Wilson F. Henderson personally; that if said persons and companies had any claims whatsoever, they were against the said Lipsey & Co., a corporation, and have been filed and received under the pretended authority of said Section 11 of Rule XXII.

Your petitioner further shows that in and by the schedules filed herein by the said Wilson F. Henderson, the said Henderson shows, among his assets, his membership in said Board of Trade of the City of Chicago, but, subject, however, to a claim in favor of said Lipsey & Company, a corporation; that said membership had not been transferred to said corporation and could not be so transferred under the rules and regulations of said Board of Trade of the City of Chicago, but, if said Lipsey & Company had any claims
13 whatsoever against said membership, it could only be by virtue of an equitable assignment and lien, which your petitioner in nowise admits, to secure a claim in favor of said Lipsey & Co. against Wilson F. Henderson; your petitioner shows, however, that the said Wilson F. Henderson likewise states in his schedules that said assignment was made to said corporation to secure the losses sustained by him and due to said corporation on account of speculation or gambling transactions; wherefore, your petitioner is informed and believes such claim or demand by said corporation against Wilson F. Henderson would be and is null and void and entirely unenforceable and said Lipsey & Company would have and has no claim or demand whatsoever as against said membership in the Board of Trade of the City of Chicago.

Your petitioner further shows that said Board of Trade of the City of Chicago, by its officers and attorneys, has, as your petitioner is informed and believes, denied the rights of your petitioner in and to said membership, and alleges and claims that the objections, claims and demands of said Armour Grain Company, George A.

Hellman and J. E. Bennett & Co., and all other creditors and claimants of Lipsey & Company, a corporation, being members of said Board of Trade of the City of Chicago are a preferred claim and lien upon said membership under said Section 11 of Rule XXII of the Rules and Regulations of the said Board of Trade of the City of Chicago, as above set forth; that said Board of Trade proposes and threatens a transfer of said membership in disregard of the rights of your petitioner therein, and to pay the proceeds obtained from the sale and transfer thereof to the said creditors of Lipsey & Company, a corporation, who are members of said Association, to the entire exclusion of your petitioner. Your petitioner further says that such action would be a fraud upon the rights of your petitioner; and that the action of said Board of Trade of the City of Chicago in receiving and recognizing as valid the said objections to the transfer of said membership, after the knowledge of the filing of said petition in bankruptcy, likewise constitutes a fraud upon the rights of your petitioner and that such objections or claims should be wholly disregarded and that the rights of your petitioner should be recognized and protected.

Your petitioner further states that he is advised by his counsel and he now so claims, that under the Bankruptcy Act of the United States, the said membership is an asset which passed to him as said Trustee, and that he is entitled to said membership and
14 to the value thereof to be disposed of for the benefit of all of the creditors of the said Wilson F. Henderson:

Wherefore, your petitioner prays that an order may be made and entered requiring the said Board of Trade of the City of Chicago to show cause, if any there be, why the said membership in said organization now standing in the name of the said Wilson F. Henderson should not be transferred to said petitioner as trustee of said Wilson F. Henderson, or why the rights of your petitioner should not be in some other way appropriately recognized for the benefit of said estate and for the purpose of a sale thereof; why your petitioner as such trustee should not be allowed to dispose of the same free and clear of any of any objections and claims whatsoever; why the said claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Company, and Board of Trade Clearing House should not be wholly ignored; and why your petitioner should not have such other and further relief as may be just and equitable.

E. H. JOHNSON,
Trustee.

STATE OF ILLINOIS,
County of Cook, ss:

E. H. Johnson, being first duly sworn, on oath says, that he is the petitioner above named; that he has read the above and foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, excepting as to those matters therein stated to be on information and belief, and as to those he believes it to be true.

(Signed) E. H. JOHNSON.

Subscribed and sworn to before me this 9th day of May, A. D. 1920.

[SEAL.] FRIEDA SCHUER,
Notary Public.

(Endorsed:) Filed June 10, 1920. John H. R. Jamar, Clerk.

And on to-wit: the 10th day of June, 1920, there was entered the following order to-wit:

15 *Order of June 10, 1920, to Show Cause.*

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the District Court of the United States, Northern District of Illinois.

Thursday, June 10, 1920.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Upon the reading and filing of the annexed verified petition and upon all of the records, processes and proceedings herein, and upon motion of Kraft, Kraft and Erskine, Attorneys for E. H. Johnson, Trustee,

It is Ordered, that the Board of Trade of the City of Chicago, show cause, if any they have, before me at my Court Rooms in the Federal Building, in the City of Chicago, County of Cook, State of Illinois, on the 25th day of June, A. D. 1920, at 10 o'clock, A. M., of said day, or as soon thereafter as counsel can be heard, why the membership in said organization now standing in the name of Wilson F. Henderson, the bankrupt herein, should not be transferred to said E. H. Johnson as Trustee of the Estate of said Wilson F. Henderson, or why the rights of the petitioner should not be in some other way appropriately recognized by it for the benefit of said estate and for the purpose of a sale of said membership; why the said Trustee should not be allowed to dispose of the said membership free and clear of any objections and claims whatsoever; why the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Co., and the Board of Trade Clearing House now on file with it, should not be wholly ignored; and why said H. E. Johnson as such Trustee should not have such other and further order or relief as to said Board of Trade of the City of Chicago, as may be just and equitable.

Let a copy of this order, together with a copy of the annexed verified petition be served upon said Board of Trade of the City of Chicago, Armour Grain Company, George H. Hellman, J. E.

Bennett & Co. and Board of Trade Clearing House, at least ten (10) days before the time fixed for the hearing hereon.

16 It Is Further Ordered that said parties shall file answer to said petition of the trustee not less than five (5) days before the day fixed for the hearing hereon.

Enter:

——— ———,
Judge.

Dated this 10th day of June, A. D. 1920.

Plea of Board of Trade of the City of Chicago.

Filed June 16, 1920.

And on to-wit: the 16th day of June, 1920, there was filed in the Clerk's office of said court a certain Plea, in words and figures following to-wit:

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Petition of E. H. Johnson, Trustee of said Henderson.

Plea to the Jurisdiction of the Court.

The Board of Trade of the City of Chicago, respondent in the above petition, appears herein for the sole purpose of pleading to and denying the jurisdiction of this court to entertain the petition of E. H. Johnson, Trustee of said Henderson, filed herein on the 10th day of June, 1920, against this respondent, or to enter an order as prayed in said petition, or any order interfering with the control and disposition of the membership of Wilson F. Henderson in accordance with the rules and by-laws of this respondent, and this respondent, not waiving its objection to the jurisdiction of this court as aforesaid, and for the sole purpose of supporting its said objection, avers:

That this respondent is organized under a special charter granted to it by the State of Illinois on the 18th day of February, 1859

17 and that by its said charter there was granted to this respondent the right to admit and expel such persons as it might see fit, in manner to be prescribed by its rules, regulations and by-laws, and the power to make such rules, regulations and by-laws from time to time as it might think proper or necessary

for the government of said corporation, not contrary to the laws of the land, and also power to establish such rules, regulations and by-laws for the management of the business of its members and the mode in which it shall be transacted, as this respondent might think proper.

That pursuant to the powers thus conferred, the members of this respondent, prior to the 1st day of November, 1899, adopted, in addition to Rules X and XXII set out in said petition, the following rules, all of which are still in full force and effect:

Rule I.

"Section 1. The government of the Board of Trade of the City of Chicago, and the control and management of its Real Estate (including all of the authority and power heretofore vested in the Board of Real Estate Managers), are hereby vested in a President, two Vice-Presidents, and fifteen Directors, who, including the President and Vice-Presidents, shall be known as the Board of Directors, all of whom shall have been members of the Association for at least one year next preceeding their election. The President, one Vice-President, and five Directors shall be elected annually. The President shall hold his office for the term of one year, or until his successor is elected and qualified; the Vice-Presidents, in like manner, shall hold their offices for the term of two years, and the Directors, in like manner, for the term of three years. Ten members of Board of Directors shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, to any fixed date preceding the next regular meeting of said Board."

Rule IV.

"Section 7. When any member of this Association has been duly convicted of failure to comply with the terms of any business obligation, or with the award of any Committee of Arbitration or Committee of Appeals, made in conformity with the rules and regulations of this Association, he shall be suspended from all privileges of the Board of Trade of the City of Chicago until all his outstanding obligations to members of the said Board of Trade shall have been settled, when he may, upon application to the Board of Directors, and upon stating under oath that he has settled all such
18 outstanding obligations, be reinstated. Notice of all applications for reinstatement shall be posted upon a properly designated bulletin in the Exchange Hall for at least fifteen (15) days prior to the hearing of such application by the Board of Directors. * * *

Sec. 9. When any member of the Association shall be guilty of a willful violation of any business contract or obligation and shall neglect or refuse to equitably and satisfactorily adjust and settle the same, or when any member shall willfully neglect or refuse to comply promptly with the award of any committee of arbitration or committee of appeals, rendered in conformity with the rules, regula-

tions and by-laws of the Association, he shall be suspended from all the privileges of this Association until such contract or obligation is satisfactorily adjusted and settled, or such award is performed or complied with. * * *

Sec. 16. All charges made to the Board of Directors against any member of the Association for any default, misconduct, or offense, shall be in writing, and in duplicate, and shall state the default, misconduct or offense charged; and the same shall be signed by one or more members of the Association, by a business firm, one or more of whose members shall be a member of the Association, or by the Chairman of a committee of the Association.

Sec. 17. No member shall be censured, suspended or expelled under this Rule, without an examination of the charges against him by the Board of Directors, nor without having an opportunity to be heard in his own defense. No examination shall take place until notice has been served on the accused member, or his firm, if the charges apply to the firm, accompanied by a copy of the charges against him or them, in writing. Such notice may be served upon the accused personally, by the Secretary or any of his assistants, or it may be left at or mailed to the accused at his ordinary place of business or residence; in either of which cases the notice shall be considered sufficient, and the examination may proceed whether the accused is present or not."

That said Henderson was admitted to membership in this respondent on the 1st day of November, 1899, and that at the time of his said admission and in order to secure the same, said Henderson signed and delivered to this respondent his written agreement to abide by the rules, regulations and by-laws of this respondent, and all amendments that might be made thereto.

That for many months prior to March 1, 1919, said Hen-
19 derson was the president and one of the principal stockholders in a corporation known as Lipsey & Company, whose business was the buying and selling of grain for present and future delivery upon the Exchange of this respondent, and that by reason of said Henderson being such president and stockholder, said corporation was under Section 11 of Rule XXII aforesaid, entitled to have itself accepted as a party to, or principal in, trades and transactions made by it upon said Exchange of this respondent, and that for many months prior to March 1, 1919, said Lipsey & Company, through said Henderson as its president and its active executive officer, was engaged in making contracts for present and future delivery upon the exchange of this respondent and said Henderson had caused the name of said corporation to be given as a principal in and party to all of said trading; that in March 1919 said Lipsey & Company became insolvent and ceased to transact business, being then indebted on business obligations, made by it in conformity with the rules and regulations of this respondent, to the following persons, firms and corporations—said individuals and the partners in said firms being members of said Board of Trade, and said corporations being entitled to the privilege of trading on said Exchange—in the amounts hereinafter set opposite their respective names:

Armour Grain Co.	$13,699.43
W. P. Anderson & Co.	173.44
Bridge & Leonard	606.04
E. W. Bailey & Co.	628.91
J. E. Bennett & Co.	2,407.27
Bartlett Frazier & Co.	73.75
Chicago Board of Trade	42.35
Carhardt, Code, Harwood Co.	390.03
Clement, Curtis & Co.	210.20
S. J. Feeney	211.25
Geo. Forbes	107.50
Geo. A. Hellman	42,600.00
F. W. Hotchkiss	447.00
Logan & Bryan	216.49
Lamson Bros. & Co.	54.43
F. S. Lewis & Co.	270.83
Lowitz & Co.	95.12
Lynch & McKee	92.69
J. F. Morton	2.80
J. P. Malloy	273.12
Sam Mincer	9.60
20 Norris Grain Co.	111.44
E. D. Norton	254.39
J. Rosenbaum Grain Co.	301.78
Riordan, Martin & Co.	527.50
Simons, Day & Co.	141.31
Sawyers Grain Co.	108.12
Scoville & Wing	223.76
A. O. Slaughter & Co.	141.25
Thomson & McKinnon	161.34
G. B. Van Ness & Co.	777.23
Ware & Leland	71.68
E. J. Young	94.25

And that said Armour Grain Company, George A. Hellman and J. E. Bennett & Co. have already duly filed with this respondent their objections to the transfer of the membership of said Henderson, and that each and every of said claims above enumerated is still owing and unpaid and constitutes an outstanding unadjusted and unsettled claim held by members of said Board of Trade with- the meaning of Section 2 of Rule X above set out, and that said membership of said Henderson is not transferable under said rules until all of said claims are paid or until all of said persons, firms and corporations shall consent thereto, and none of said persons, firms or corporations have consented to the transfer of said membership, and by reason thereof this respondent is without power to, and is unwilling to, transfer said membership as prayed in said petition.

That there is no rule, regulation or by law of this respondent under or by which a member of this respondent to whom another of its members is indebted may cause the membership in this re-

spondent of said debtor member to be sold to pay such debt, and that this respondent is advised by its counsel, and therefore claims, that under the charter of this respondent and the laws of the State of Illinois as construed by its courts, a membership in this respondent is neither property nor subject to sale on execution or other legal process issued by a creditor of such members for the purpose of securing the payment of any debt due from a member of this respondent to such creditor, and also that said membership is not an asset in bankruptcy under the Federal Bankruptcy Act, and that when a member of this respondent is adjudged a bankrupt under said law, his trustee in bankruptcy under said law acquires no right, title or interest in said membership of said bankrupt, and this respondent is further advised by its counsel and claims that if said bank-
21 rupt law shall be construed by the courts as an asset in bankruptcy and subject to sale for the purpose of paying the debts of such member of this respondent, it violates the tenth amendment of the constitution of the United States in that it deprives the State of Illinois of its exclusive right to regulate its intrastate commerce.

By reason of the facts and claims hereinbefore alleged, this respondent is advised by its counsel, and claims, that said petition of said E. H. Johnson presents a controversy in bankruptcy, as distinguished from a proceeding in bankruptcy, and that this court has no jurisdiction thereof, or of this respondent in connection therewith, without the consent of this respondent, and this respondent does not consent that this court may take jurisdiction of said controversy, but herein objects to this court exercising such jurisdiction, and asks that said petition be dismissed for want of jurisdiction.

[Corporate Seal.] BOARD OF TRADE OF THE CITY OF CHICAGO,
By JOHN R. MAUFF,
Its Secretary.

ROBBINS, TOWNLEY & WILD,
HENRY S. ROBBINS,
Solicitors for Respondent.

STATE OF ILLINOIS,
County of Cook, ss:

John R. Mauff, being first duly sworn, says that he is the Secretary of the respondent, the Board of Trade of the City of Chicago; that he has read the foregoing pleading and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

JOHN R. MAUFF.

Subscribed and sworn to before me, this 16th day of June, 1920.
[SEAL.] OSCAR E. FLINT,
Notary Public.

(Endorsed:) Filed June 16, 1920. John H. R. Jamar, Clerk.

And on to-wit: the 21st day of June, 1920, there was entered the following order by the Court in words and figures following to-wit:

22 *Order of June* 21, 1920.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Monday, June 21, 1920.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In re WILSON F. HENDERSON, Bankrupt.

On motion, it is ordered by the court that leave be and hereby is given E. H. Johnson, Trustee herein, to amend his petition by making Armour Grain Company, George H. Hellman and J. E. Bennett & Company parties to rule to show cause entered herein on June 10, 1920.

And afterwards on, to wit, the 2nd day of May, 1921, this matter coming on to be heard, the following order was entered by the Court:

Order of May 2, 1921.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Monday, May 2, 1921.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In re WILSON F. HENDERSON, Bankrupt.

This cause coming on to be heard upon the motion of the Board of Trade of the City of Chicago to dismiss the petition of E. H. Johnson, Trustee herein, against said Board of Trade, and the amendment thereto, the Court being fully advised in the premises, it is ordered by the court that said motion be and it hereby is overruled and denied.

23 And afterwards on, to wit, the 25th day of July, 1921, this matter coming on to be heard, the following order was entered by the Court:

Order of July 25, 1921.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Monday, July 25, 1921.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In re WILSON F. HENDERSON, Bankrupt.

On motion, it is ordered by the Court that leave be and hereby is given to E. H. Johnson, Trustee herein, to file an amendment and supplement to the petition heretofore filed by him against the Board of Trade of the City of Chicago and others.

And on, to wit, the 25th day of July, 1921, came the Trustee by his attorney and filed in the Clerk's office of said Court a certain Amendment and Supplement in words and figures following, to wit:

Amendment and Supplement to Petition of Trustee.

Filed July 25, 1921.

Entered July 25, 1921.

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois.

Gen. No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Amendment and Supplement to Petition of E. H. Johnson, Trustee.

Now comes E. H. Johnson, Trustee, in bankruptcy for Wilson F. Henderson and by leave of Court first had and obtained
24 amends and supplements the petition heretofore filed by him against the Board of Trade of the City of Chicago and others by adding thereto and amending said petition so that said petition shall read following the first line on the sixth, or last, page of said petition as follows:—

Your petitioner further shows that the claims, objections or charges made and filed against the said Wilson F. Henderson within ten days of May 1, 1919, as hereinabove referred to, were the claims of that certain firm known as Bridge & Leonard, the nature of which is unknown to your petitioner and also the claim upon an award alleged to have been made under the rules of the Board of Trade against the said Wilson F. Henderson by reason of a transaction with one Thomas Walters; that the claim, objection or charge so filed by Bridge & Leonard was thereafter withdrawn, and that after the withdrawal thereof, about, to wit December, 1919, the said claim upon said award was dismissed and denied by the Board of Directors thereof, and that thereafter and until the 29th day of January, 1920, after the filing of the application for the adjudication in bankruptcy of the said Wilson F. Henderson there were no claims, objections or charges on file with said Board of Trade of the City of Chicago as against the said Wilson F. Henderson, or the transfer of his membership, except only the claim of the Board of Trade Clearing House, as hereinabove stated; but your petitioner shows that subsequent to the filing of his petition and to the facts therein set forth and subsequent to the denial of the plea by the respondents to said petition to the jurisdiction of this court over such petition, there was again presented to and accepted by the said Board of Trade of the City of Chicago the claim or charge made by or in behalf of the said Bridge & Leonard, by which the suspension of the said Wilson F. Henderson from all of the privileges of said Board of Trade was then demanded, such claim, charge, or proceeding having been filed on or about, to wit, June 17, 1921; that Bridge & Leonard are creditors of said Lipsey & Co. the corporation, and have no other claim of any kind against said Henderson but otherwise your petitioner is not advised as to the nature of such claim, or charge, or the proceedings so pending, or as to whether such proceedings have been in accordance with the rules of said Board of Trade, or as to how far such proceedings have progressed; that your petitioner denies that said Bridge & Leonard have any rights against said Henderson or his said membership, yet your petitioner shows that the said Board of Trade of the City of Chicago has permitted the filing of said proceedings and denies the right of your petitioner by reason thereof, and alleges and claims that by reason of such proceedings by said Bridge & Leonard that the membership of said Wilson F. Henderson in said Board of Trade is impaired within the meaning of the rules and regulations of said Board of Trade; that said Henderson has not used in business, or otherwise, his said membership or done any business upon said Board of Trade since May 1, 1919.

Your petitioner further shows that the said Bridge & Leonard should be made a party hereto and to his petition and be required to show cause why the prayer of this petition as now amended and supplemented should not be granted: and that the said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Company, Board of Trade Clearing House, all of whom are parties hereto and have appeared in these proceedings,

shall likewise be required to answer this amendment and supplement to the petition herein.

And your petitioner further shows that the said Wilson F. Henderson was, as hereinbefore stated, on January 24, 1920, a member of the Board of Trade of the City of Chicago, and the owner of all right, title and interest in and to a membership therein with full power to sell and transfer the same under the rules of said Board; that upon the appointment of your petitioner all such right, title and interest of said Wilson F. Henderson passed to your petitioner and became a part of the estate of said bankrupt to be administered by and under the jurisdiction of this Court; that the said Board of Trade of the City of Chicago has not now and has not had since the petition in bankruptcy was filed against said Wilson F. Henderson any right, title, interest or claim in, to or against said membership of any kind whatsoever; that so far as your petitioner is informed and believes said Board has never made any claim of ownership in or a lien against said membership in its own behalf and has never pretended to have any other interest in regard thereto except that all memberships shall be subject to the rules and regulations of said Board; and your petitioner further shows that he claims all right, title and interest in said membership under the law
26 but subject to the rules and regulations of said Board.

Wherefore your petitioner prays that an order may be made and entered requiring said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Company, Board of Trade Clearing House and Bridge & Leonard to answer the petition and the amendment and supplement thereto herein and hereby made and to show cause, if any, there be why the said membership in said Board of Trade of the City of Chicago now standing in the name of the said Wilson F. Henderson should not be transferred to said petitioner, as trustee of said Wilson F. Henderson, or why the rights of your petitioner should not be in some other way appropriately recognized and confirmed for the benefit of the estate of said bankrupt and for the purpose of a sale of said membership and why your petitioner, as such trustee, should not be allowed to dispose of the same free and clear of any objections, claims, proceedings for suspension or otherwise and why the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Company, Board of Trade Clearing House, Bridge & Leonard should not be wholly ignored and why your petitioner should not have such other further relief as may be just and equitable.

E. H. JOHNSON,
Trustee.

STATE OF ILLINOIS,
County of Cook, ss:

E. H. Johnson being first duly sworn, on oath says, that he is the petitioner above named; that he has read the above and foregoing amendment and supplement to his petition and knows the contents thereof, and that the same is true of his own knowledge excepting as

those matters therein stated to be on information and belief, and to those he believes them to be true.

E. H. JOHNSON,
Trustee.

Subscribed and sworn to before me this 22d day of July, A. D. 921.

[SEAL.] EVELYN C. GREENE,
Notary Public.

(Endorsed:) Filed July 25, 1921. John H. R. Jamar, Clerk.

And on to-wit: the 25th day of July, 1921, there was filed in the clerk's office of said court a certain Plea, in words and gures following to-wit:

Filed July 25, 1921.

NITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, ss:

the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Plea to the Jurisdiction of the Court.

Armour Grain Company, a corporation, George A. Hellman and eorge S. Bridge and John R. Leonard, doing business as Bridge & eonard, and James E. Bennett, Frank J. Saibert, Frank F. Thomp- n and Frank A. Miller, doing business as James E. Bennett & Co., spondents in the above petition, appear herein for the sole purpose pleading to and denying the jurisdiction of this court to entertain e petition of E. H. Johnson, Trustee of said Henderson, filed erein on the 10th day of June, 1920, against these respondents, d the Chicago Board of Trade, or to enter an order as prayed in said tition, and these respondents, not waiving their objection to the risdiction of this court as aforesaid, and for the sole purpose of pporting their said objection, adopt and make a part of this plea l the averments contained in the plea to the jurisdiction heretofore ed herein by the Board of Trade of the City of Chicago, and ask at all of said averments be treated as a part of this plea as fully as the same were herein set out in full.

By reason of the facts and claims therein in said petition set out, ese respondents are advised by their counsel, and claim, that said tition of said E. H. Johnson presents a controversy in bankruptcy,

as distinguished from a proceeding in bankruptcy, and that
28 this court has no jurisdiction thereof, or of these respondents in connection therewith, without the consent of these respondents, and these respondents do not consent that this court may take jurisdiction of said controversy, but herein object to this court exercising such jurisdiction, and ask that said petition be dismissed for want of jurisdiction.

ARMOUR GRAIN COMPANY,
By ROBBINS, TOWNLEY & WILD,
Its Solicitors.

GEORGE S. BRIDGE,
JOHN R. LEONARD,
By ROBBINS, TOWNLEY & WILD,
Their Solicitors.

GEORGE A. HELLMAN,
By ROBBINS, TOWNLEY & WILD,
His Solicitors.

JAMES E. BENNETT,
FRANK J. SAIBERT,
FRANK F. THOMPSON, &
FRANK A. MILLER,
By ROBBINS, TOWNLEY & WILD,
Their Solicitors.

HENRY S. ROBBINS,
Counsel for Respondents.

(Endorsed:) Filed July 25, 1921. John H. R. Jamar, Clerk.

29 And afterwards on, to wit, the 25th day of July, 1921, this matter coming on to be heard, the following order was entered by the Court:

Order of July 25, 1921.

Entered July 25, 1921.

UNITED STATES OF AMERICA,
Northern Distrct of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Monday, July 25, 1921.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Order.

This matter coming on on the plea of Armour Grain Company, a corporation, George A. Hellman, and George S. Bridge and John

R. Leonard, doing business as Bridge & Leonard, and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., respondents to the petition of E. H. Johnson, Trustee of said Henderson, filed herein on the 10th day of June, 1920, and the court being advised in the premises, it is

Ordered that said plea be and the same is hereby denied.

Enter.

K. M. L.,
Judge.

30 And on to wit: the 25th day of July, 1921, there was filed in the Clerk's office of said Court a certain Answer, in words and figures following to-wit:

Answer of Board of Trade of the City of Chicago.

Filed July 25, 1921.

UNITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

The Answer of the Board of Trade of the City of Chicago to the Petition of E. H. Johnson, Trustee, Filed on June 10, 1920, and the Amendment and Supplement Thereto.

The Board of Trade of the city of Chicago, without waiving or intending to waive its right to object to the jurisdiction of the above entitled court over this respondent, and its right to insist on the validity of its plea to the jurisdiction of this court heretofore overruled by this court, for answer to so much of the petition as it is advised that it is material for it to make answer unto, avers:

That this respondent is organized under a special charter granted to it by the state of Illinois on the 18th day of February, 1859, and that by its said charter there was granted to this respondent the right to admit and expel such persons as it might see fit, in manner to be prescribed by its rules, regulations and by-laws, and the power to make such rules regulations and by-laws from time to time as it might think proper or necessary for the government of said corporation, not contrary to the laws of the land, and also power to establish such rules, regulations and by-laws for the management of the business of its members and the mode in which it shall be transacted, as this respondent might think proper.

That pursuant to the powers thus conferred, the members of this respondent, prior to the 1st day of November, 1899, adopted, in addition to Rules X and XXII set out in said petition, the following rules, all of which are still in full force and effect:

Rule I.

"Section 1. The government of the Board of Trade of the City of Chicago, and the control and management of its Real Estate (including all of the authority and power heretofore vested in the Board of Real Estate Managers), are hereby vested in a President, two Vice-Presidents, and fifteen Directors, who, including the President and Vice-President, shall be known as the Board of Directors, all of whom shall have been members of the Association for at least one year next preceding their election. The President, one Vice-President, and five Directors shall be elected annually. The President shall hold his office for the term of one year, or until his successor is elected and qualified; the Vice-Presidents, in like manner, shall hold their offices for the term of two years, and the Directors, in like manner, for the term of three years. Ten members of the Board of Directors shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, to any fixed date preceding the next regular meeting of said Board."

Rule IV.

"Section 7. When any member of this Association has been duly convicted of failure to comply with the terms of any business obligation, or with the award of any Committee of Arbitration or Committee of Appeals, made in conformity with the rules and regulations of this Association, he shall be suspended from all privileges of the Board of Trade of the City of Chicago until all his outstanding obligations to members of the said Board of Trade shall have been settled, when he may, upon application to the Board of Directors, and upon stating under oath that he has settled all such outstanding obligations, be reinstated. Notice of all applications for reinstatement shall be posted upon a properly designated bulletin in the Exchange Hall for at least fifteen (15) days prior to the hearing of such application by the Board of Directors. * * *

Sec. 9. When any member of the Association shall be guilty of a willful violation of any business contract or obligation and shall neglect or refuse to equitably and satisfactorily adj-
32 and settle the same, or when any member shall willfully neglect or refuse to comply promptly with the award of any committee of arbitration or committee of appeals, rendered in conformity with the rules, regulations and by-laws of the Association, he shall be suspended from all of the privileges of this Association until such contract or obligation is satisfactorily adjusted and settled, or such award is performed or complied with.

When any member shall be guilty of improper conduct of a per-

sonal character in any of the rooms of the Association, or shall violate any of the rules, regulations or by-laws of the Association or shall be guilty of any dishonorable conduct, for which a specific penalty has not been provided, he shall be suspended by the Board of Directors from all of the privileges of membership for such period as in their discretion the gravity of the offense committed may warrant. When any member shall be guilty of making or reporting any false or fictitious purchase or sale, or where any member shall be guilty of an act of bad faith, or any attempt at extortion or of any dishonest conduct, he shall be expelled by the Board of Directors. Or when a member shall, either in the Exchange Building or elsewhere, contract to give to himself or another the option to sell or buy any of the articles dealt in on this Exchange in violation of any criminal statute of this State, he shall forfeit the right to have said contract enforced under the rules of this Association. * * *

Sec. 16. All charges made to the Board of Directors against any member of the Association for any default, misconduct*fi* or offense, shall be in writing, and in duplicate, and shall state the default, misconduct or offense charged; and the same shall be signed by one or more members of the Association, by a business firm, one or more of whose members shall be a member of the Association, or by the Chairman of a committee of the Association.

Sec. 17. No member shall be censured, suspended or expelled under this Rule, without an examination of the charges against him by the Board of Directors, nor without having an opportunity to be heard in his own defense. No examination shall take place until notice has been served on the accused member, or his firm, if the charges apply to the firm, accompanied by a copy of the charges against him or them, in writing. Such notice may be served upon the accused personally, by the Secretary or any of his assistants, or it may be left at or mailed to the accused at his ordinary place of business or residence; in either of which cases the notice shall be
33 considered sufficient, and the examination may proceed whether the accused is present or not.

That there is no rule or by-law or regulation of the Board of Trade under which any member of this respondent is entitled to any certificate of membership or other written evidence of the fact that such person is a member of this respondent.

That said Henderson was admitted to membership in this respondent on the 1st day of November, 1899, and that at the time of his said admission and in order to secure the same, said Henderson signed and delivered to this respondent his written agreement to abide by the rules, regulations and by-laws of this respondent, and all amendments that might be made thereto.

That for many months prior to March 1, 1919, said Henderson was the president and a bona fide and substantial stockholder in a corporation known as Lipsey & Company, whose business was the buying and selling of grain for present and future delivery upon the Exchange of this respondent, and another of its executive officers was

also a bona fide and substantial stockholder of said corporation and also a member in good standing of this respondent, and that by reason of the facts aforesaid said corporation was under Section 11 of Rule XXII aforesaid, entitled to have itself accepted as a party to, or principal in, trades and transactions made by it upon said Exchange of this respondent, and that for many months prior to March 1, 1919, and while said corporation was thus entitled to trade in its own name upon the Exchange of this respondent, said Lipsey & Company, through said Henderson as its president and its active executive officer, was engaged in making contracts for present and future delivery upon the Exchange of this respondent and said Henderson had caused the name of said corporation to be given as a principal in and party to all of said trading; that in March, 1919, said Lipsey & Company became insolvent and ceased to transact business, being then indebted on business obligations, made by it in its own name upon said Exchange in conformity with the rules and regulations of this respondent, to the following persons, firms and corporations—said individuals and the partners in said firms being members of said Board of Trade, and said corporations being entitled to the privilege of trading on said Exchange—in the amounts hereinafter set opposite their respective names:

34	Armour Grain Co	$13,699.43
	W. P. Anderson & Co	173.44
	Bridge & Leonard	606.04
	E. W. Bailey & Co	628.91
	J. E. Bennett & Co	2,407.27
	Bartlett Frazier & Co	73.75
	Chicago Board of Trade	42.35
	Carhardt, Code, Hardwood Co	390.03
	Clement, Curtis & Co	210.20
	S. J. Feeney	211.25
	Geo. Forbes	107.50
	Geo. A. Hellman	42,600.00
	F. W. Hotchkiss	447.00
	Logan & Bryan	216.49
	Lamson Bros. & Co	54.43
	F. S. Lewis & Co	270.83
	Lowitz & Co	95.12
	Lynch & McKee	92.69
	J. F. Morton	2.80
	J. P. Malloy	273.12
	Sam Mincer	9.60
	Norris Grain Co	111.44
	E. D. Norton	254.39
	J. Rosenbaum Grain Co	301.78
	Riordan, Martin & Co	527.50
	Simons, Day & Co	141.31
	Sawyers Grain Co	108.12
	Scoville & Wing	223.76
	A. O. Slaughter & Co	141.25

Thomson & McKinnon	161.34
G. B. Van Ness & Co.	777.23
Ware & Leland	71.68
E. J. Young	94.25

And that said Armour Grain Company, George A. Hellman and J. E. Bennett & Co. have already duly filed with this respondent their objections to the transfer of the membership of said Henderson, and that each and every of said claims above enumerated is still owing and unpaid; that this respondent has always construed Section 2 of said Rule X and Section 11 of Rule XXII as constituting a debt of a corporation (entitled to trade in its own name under Section 11 of Rule XXII) an outstanding unadjusted and unsettled claim held by members of said Board of Trade within the meaning of Section 2 of Rule X above set out, and that said membership of said Henderson is not transferable under said rules until all of said claims are paid or until all of said persons, firms and corporations shall consent thereto, and none of said persons, firms or corporations have consented to the transfer of said membership, and said Bridge & Leonard have instituted before the Board of Directors a proceeding, under Section 7 of Rule IV, to have said Henderson suspended from all the privileges of this respondent by reason of the failure of said Lipsey & Company to pay their said claim, which proceeding is still pending before said Board of Directors, and by reason of the facts aforesaid said membership of said Henderson is impaired within the meaning of Section 2 of Rule X; and this respondent is without power to, and is unwilling to, transfer said membership as prayed in said petition.

That there is no rule, regulation or by-law of this respondent under or by which a member of this respondent to whom another of its members is indebted may cause the membership in this respondent of said debtor member to be sold to pay such debt, and that this respondent is advised by its counsel, and therefore claims, that under the charter of this respondent and the laws of the state of Illinois as construed by its courts, a membership in this respondent is neither property nor subject to sale on execution or other legal process issued by a creditor of such member for the purpose of securing the payment of any debt due from a member of this respondent to such creditor, and also that said membership is not an asset in bankruptcy under the Federal Bankruptcy Act, and that when a member of this respondent is adjudged a bankrupt under said law, his trustee in bankruptcy under said law acquires no right, title or interest in said membership of said bankrupt, and this respondent is further advised by its counsel and claims that if said bankruptcy law should be so construed as to make a membership in this respondent an asset in bankrupty and subject to sale for the purpose of paying the debts of such member of this respondent, said law would violate the tenth amendment of the Constitution of the United States in that it deprives the State of Illinois of its exclusive right to regulate its intrastate commerce.

36 Wherefore this respondent asks that said petition be dismissed as to this respondent at petitioner's cost.

[Corporate Seal.] BOARD OF TRADE OF THE CITY OF CHICAGO.
By JOHN R. MAUFF, *Its Secretary.*

ROBBINS, TOWNLEY & WILD,
Solicitors for Respondent.

STATE OF ILLINOIS,
County of Cook, ss:

John R. Mauff, being first duly sworn, says that he is the Secretary of the respondent, the Board of Trade of the City of Chicago; that he has read the foregoing pleading and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

JOHN R. MAUFF.

Subscribed and sworn to before me this 21st day of June, A. D. 1921.

[SEAL.] JOHN A. AITKINS,
Notary Public.

(Endorsed:) Filed July 25, 1921 John H. R. Jamar, Clerk.

37 And on to-wit: the 25th day of July, 1921, there was filed in the Clerk's office of said Court a certain Answer in words and figures following to-wit:

Filed July 25, 1921.

UNITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

The Answer of Armour Grain Company, a Corporation, George A. Hellman, and James E. Bennett, Frank J. Saibert, Frank F. Thompson, and Frank A. Miller, Doing Business as James E. Bennett & Co., to the Petition of E. H. Johnson, Trustee, Filed on June 10, 1920, and the Amendment and Supplement Thereto.

Armour Grain Company, a corporation, George A. Hellman and George S. Bridge and John R. Leonard, doing business as

Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., without waiving or intending to waive their right to object to the jurisdiction of the above entitled court over those respondents, and their right to insist on the validity of their plea to the jurisdiction of this court heretofore overruled by this court, for answer to so much of the petition as they are advised that it is material for them to make answer unto, aver:

These respondents adopt and make a part of this answer all of the averments contained in the answer of the Chicago Board of Trade to said petition of E. H. Johnson, Trustee, and ask that all of said averments be treated as a part of this answer as fully as if all of said averments had been repeated in this answer of these respondents.

Wherefore these respondents ask that said petition be dismissed as to these respondents at petitioner's costs.

ARMOUR GRAIN COMPANY,
GEORGE A. HELLMAN,
JAMES E. BENNETT,
FRANK J. SAIBERT,
FRANK F. THOMPSON, AND
FRANK A. MILLER, AND
GEORGE S. BRIDGE,
JOHN R. LEONARD,
By ROBBINS, TOWNSLEY & WILD,
Their Solicitors.

HENRY S. ROBBINS,
Council for Respondents.

(Endorsed:) Filed July 25, 1921 John H. R. Jamar, Clerk.

And afterwards on, to-wit, the 29th day of July, 1921, this matter coming on to be heard, the following order was entered by the Court:

Order or Decree of July 29, 1921.

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois.

Friday, July 29, 1921.

Present: Hon. K. M. Landis, District Judge.

Gen. No. 28256.

In the Matter of Bankruptcy of WILSON F. HENDERSON.

This cause now coming on to be heard upon the verified petition of E. H. Johnson, Trustee in bankruptcy of Wilson F. Henderson,

Bankrupt, filed June 10, 1920, and the amendment and supplement thereto heretofore filed by leave of Court, said petition asking to have the membership of said bankrupt in the Board of Trade of the City of Chicago declared an asset of said bankrupt's
39 estate free and clear of any and all claims, and upon a rule to show cause heretofore entered upon said petition against the Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Co., and Bridge & Leonard, and upon the answers filed by all of said parties to said petition as amended and supplemented and to said rule to show cause against them, and this cause having been submitted to the Court by all parties thereto upon the petition of the Trustee, as amended and supplemented, and the answers thereto of all said parties, and without evidence being heard, and the Court having examined an deconsidered the petition and answers and all facts therein set forth, and the cause having been fully argued, and the Court being fully advised in the premises,

It is now found, considered and determined by the court that this court has jurisdiction of the subject matter and of the parties hereto; that there is no dispute as to the material facts in this cause but all of the facts are as set forth in the petition, the amendment and supplement thereto and the answers to the petition as amended and supplemented; that, from the facts so appearing to the court, the said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Co., Board of Trade Clearing House and Bridge & Leonard, and each and all of them have failed by their answers to show cause in compliance with the previous order of this court; that the membership of the bankrupt, Wilson F. Henderson, in the Board of Trade of the City of Chicago is property within the meaning of the Bankruptcy Act, which has passed and now belongs to said E. H. Johnson, as Trustee in bankruptcy of the estate of Wilson F. Henderson, bankrupt; that prior to the filing of the petition in bankruptcy against Wilson F. Henderson and on January 24, 1920, the said Wilson F. Henderson owned and held said membership in his own name with full right and power which he might have exercised for his own benefit to transfer his said membership to any person eligible to membership in said Board of Trade, said bankrupt having complied with all of the rules of said Board and having duly posted on May 1, 1918, his application for the transfer of such membership more than ten days prior to January 24, 1920; that on January 24, 1920, there were no claims or objections filed or pending with, or that had been allowed by the Board of Trade of the City of Chicago based upon outstanding, unadjusted or
40 unsettled claims or contracts against said Wilson F. Henderson filed within ten days of the posting of his application for the transfer of membership, and that the membership of said bankrupt was not in any way impaired or forfeited, nor were any proceedings then pending for the discipline of said bankrupt; that upon the appointment of E. H. Johnson as Trustee of said bankrupt and following the adjudication of bankruptcy, said Trustee became the owner and holder of said membership for the purpose of the sale,

transfer and disposition thereof for the benefit of the bankrupt estate with all of the rights and powers which the bankrupt might have exercised for the transfer thereof; that the claims against the corporation known as Lipsey & Company as set forth in the answers herein do not constitute outstanding, unadjusted or unsettled claims or contracts against the bankrupt herein proper to be filed as objections to the transfer of said bankrupt's membership at any time and that no such claims or objections had been filed prior to the filing of the petition in bankruptcy against Wilson F. Henderson on January 24, 1920; that the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Co., were claims against Lipsey & Company and were not proper to be filed or recognized by the Board of Trade of the City of Chicago and were filed subsequent to January 24, 1920, and none of said claims, or any other claims against Lipsey & Company as set forth in the answers herein constitute valid objections, claims or liens upon or against the said membership or the transfer thereof; that the claim or objection of the Board of Trade Clearing House was not filed within ten days after the posting of the application for transfer of such membership and does not constitute a valid claim or lien thereon or against the transfer thereof; that the only right or remedy which creditors of the corporation known as Lipsey & Company might have, or could have against said Wilson F. Henderson as an officer of said corporation under the rules of the Board of Trade of the City of Chicago was to have said Henderson disciplined in accordance with said rules, but no proceedings for the purpose or object of disciplining said Henderson were pending on January 24, 1920; that after the adjudication of Henderson as a bankrupt and the appointment of a trustee said Henderson ceased to be a member of the Board of Trade of the City of Chicago, his membership having thereupon passed to the Trustee by operation of law; that the proceedings for the suspension of said Henderson filed on June 17, 1921, by Bridge & Leonard were filed long after these proceedings in bankruptcy were pending, after the adjudication in bankruptcy thereof, after the trustee had become possessed of and the owner for the purpose of sale of said membership and after said Henderson had ceased to be a member of said Board, and said proceedings were entirely unavailing and invalid and do not constitute any lien or claim, objection or impairment of said membership as against the Trustee herein.

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It is therefore ordered, adjudged and decreed that the membership of said bankrupt, Wilson F. Henderson, in the Board of Trade of the City of Chicago is property within the meaning of the Bankruptcy Act and which has passed and now belongs to said E. H. Johnson, as Trustee in bankruptcy of the assets of said Wilson F. Henderson, and that said membership has passed and now belongs to said Trustee free and clear of any claims, objections, liens or otherwise under the rules of said Board of Trade of the City of Chicago, and that said Trustee shall hold and now does hold the same for sale and transfer for the benefit of said estate free and clear of any claims, objections, impairment or otherwise as against said Wilson F. Henderson.

It is further ordered, adjudged and decreed that the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Co., Board of Trade Clearing House, and Bridge & Leonard are hereby overruled and disallowed and declared invalid as against the membership of said Wilson F. Henderson in the Board of Trade of the City of Chicago, and the rights of E. H. Johnson, Trustee in bankruptcy of Wilson F. Henderson; and the said Board of Trade of the City of Chicago is hereby ordered to disallow and to refuse to recognize for any purpose as against E. H. Johnson, Trustee, the said claims and shall not permit the filing of any other claims, or proceedings as objections, liens or otherwise as against E. H. Johnson, Trustee, upon or against the said membership now standing in the name of Wilson H. Henderson; said Board of Trade of the City of Chicago is hereby ordered to disregard or dismiss proceedings of Bridge & Leonard for the suspension of said Wilson F. Henderson and shall not conduct any hearing or permit any further proceedings for the discipline of said Henderson, or take or permit any action of any kind whatever hereafter as against the rights of E. H. Johnson, Trustee, as herein determined, at the petition of Bridge & Leonard or any other person or corporation, which might or could or
42 shall have as its object the impairment or forfeiture of said membership; and said Board of Trade is also hereby ordered to permit the transfer of said membership upon the application of the trustee, but of no other person, to any person eligible to membership in accordance with its rules relating to the transfer of memberships.

It is further ordered, adjudged and decreed that in order to enable said E. H. Johnson as said Trustee to sell and dispose of said membership for the benefit of said estate, the said Board of Trade of the City of Chicago shall recognize, accept and enter upon its records said E. H. Johnson, Trustee, as owner of the said membership of said Wilson F. Henderson in and upon said Board of Trade of the City of Chicago, but for the purpose of sale only.

Enter: K. M. LANDIS,
Judge.

And on to-wit: the 29th day of July, 1921, there was filed in the clerk's office of said court a certain Stipulation, in words and figures following to-wit:

Stipulation.

Filed July 29, 1921.

Gen. No. 28,256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON; the Petition of E. H. JOHNSON, Trustee, Against Board of Trade of the City of Chicago et al.

Stipulation.

It is hereby stipulated by the parties to this proceeding that the Board of Trade Clearing House mentioned in the proceedings herein

is not an independent person, but a mere agency or department of the Board of Trade of the City of Chicago, and that the claim of the Board of Trade Clearing House referred to in the proceedings herein is the claim of the Board of Trade of the City of Chicago.

It is therefore stipulated that the proceeding may be dismissed as to the Board of Trade Clearing House without prejudice to the rights of either of said parties.

KRAFT, KRAFT & ERSKINE,
Solicitors for Trustee.

ROBBINS, TOWNLEY & WILD,
Solicitors for Board of Trade et al.

(Endorsed:) Filed July 29, 1921. John H. R. Jamar, Clerk.

43 And afterwards on, to wit, the 29th day of July, 1921, this matter coming on to be heard, the following order was entered by the Court:

Order of July 29, 1921.

UNITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern Division of Illinois, Eastern Division.

Friday, July 29, 1921.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Order.

This cause now coming on upon the petition of E. H. Johnson, Trustee, against the Board of Trade of the City of Chicago and upon stipulation of the parties thereto this day filed, it is

Ordered that said proceedings as to the Board of Trade Clearing House be dismissed.

——— ———,
Judge.

And on, to wit, the 12th day of August, 1921 came the respondents by their attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

44 *Petition for Appeal.*

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Petition for Allowance of Appeal.

Board of Trade of the City of Chicago, Armour Grain Company, a corporation; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., respondents to the petition of E. H. Johnson, Trustee, filed in this court on the 10th of June, 1920, conceiving themselves to be aggrieved by the order and decree entered in this court on the 27th day of July, 1921, do hereby appeal from said order and decree to the United States Circuit Court of Appeals of the Seventh Circuit for the reasons specified in the assignment of errors filed herewith, and they pray that this appeal may be allowed, and that the transcript of the record, stipulations and other records herein be transmitted forthwith to the United States Circuit — of Appeals for the Seventh Circuit.

BOARD OF TRADE OF THE CITY OF CHICAGO,
ARMOUR GRAIN COMPANY,
GEORGE A. HELLMAN,
GEORGE S. BRIDGE,
JOHN R. LEONARD,
JAMES E. BENNETT,
FRANK J. SAIBERT,
FRANK F. THOMPSON,
FRANK A. MILLER,
ROBBINS, TOWNLEY & WILD,
Their Solicitors.

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

45 And on, to wit, the 12th day of August, 1921, came the respondents by their attorneys and filed in the Clerk's office of said Court a certain Assignments of Errors in words and figures following, to wit:

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Assignments of Errors.

Now come the respondents, Board of Trade of the City of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., and file the following assignment of errors, upon which they rely for grounds for reversal on the appeal in the above entitled cause:

That the District Court erred—

1. In overruling and not sustaining the pleas to the jurisdiction of this court as set forth by these respondents, and in not dismissing said petition for want of jurisdiction:

2. In holding the membership of the bankrupt, Wilson F. Henderson, to be property within the meaning of the Bankrupt Act, and in also holding that said membership now belong to the said E. H. Johnson as trustee in bankruptcy:

3. In adjudging that Wilson F. Henderson had full power and right on January 24, 1920, to transfer his said membership to any person eligible for membership in said Board:

4. In adjudging that on January 24, 1920, there were no claims or objections filed or pending, based upon outstanding, unadjusted or unsettled claims or contracts, and that said membership was not in any way impaired or forfeited;

46 5. In holding that upon the appointment of E. H. Johnson as Trustee of said bankrupt he became the owner and holder of said membership for the purpose of transfer and disposition thereof;

6. In adjudging that the claims against Lipsey & Company set out in the answer of said Board of Trade do not constitute outstanding, unadjusted or unsettled claims or contracts against said Henderson proper to be filed as objections to the transfer of his membership at any time;

7. In adjudging that no such claims or objections had been filed prior to the petition in bankruptcy of said Henderson on January 24, 1920;

8. In holding that the claims of the Board of Trade Clearing House did not constitute a valid claim or lien against the transfer of said membership;

9. In adjudging that after the adjudication of bankruptcy and the appointment of said trustee, said Henderson ceased to be a member of said Board of Trade and that his membership by operation of law passed into said trustee;

10. In adjudging that the proceedings for the suspension of said Henderson filed on June 17, 1921, were unavailing and invalid and did not constitute an impairment of said membership as against said trustee;

11. In adjudging that said membership of said Henderson now belongs to said trustee free and clear of any claims, objections, liens or otherwise under the rules of the Board of Trade of the City of Chicago, and that said trustee should hold same for sale and transfer for the benefit of said estate free and clear of any claims, objections, impairment or otherwise as against said Henderson;

12. In adjudging that the claims of these respondents were invalid as against the membership of said Henderson and the rights of said Johnson as trustee;

13. In entering the decree ordering that respondent, Board of Trade of the City of Chicago, disallow and refuse to recognize for any purpose as against said trustee the said claims mentioned in said answer of the respondent, Board of Trade, and in ordering that said Board of Trade shall not allow any other claims or proceedings as objections, liens or otherwise against said trustee upon or against the membership of said Henderson;

14. In directing said Board of Trade to disregard and dismiss the proceedings of the respondent, Bridge & Leonard for the suspension of said Henderson and take no action in said proceeding
47 which would impair or forfeit that membership;

15. In ordering the Board of Trade to permit the transfer of said membership upon the application of the trustee but of no other person;

16. In ordering said trustee to sell and dispose of said membership for the benefit of said estate;

17. In directing the Board of Trade to recognize, accept and enter upon its records said E. H. Johnson, Trustee, as the owner of said membership of said Henderson;

18. In not dismissing the petition of the trustee.

ROBBINS, TOWNLEY & WILD,
Solicitors for said Respondents.

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

And afterwards, to wit, on the 12th day of August, 1921, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

Order of Aug. 12, 1921.

UNITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON; Petition of E. H. JOHNSON, Trustee, Filed June 10, 1920.

Order.

The respondents in the above petition having filed their certain petition of appeal on assignments of error, now, on motion of counsel for respondents, it is

Ordered that an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the final order entered in the above entitled proceedings on the 27th day of July, 1921, be and the same is hereby allowed, and that a certified transcript of the record of the proceedings be forthwith transmitted to the said Circuit Court of Appeals; and it is

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Further Ordered that the defendant file within ten (10) days from the entry of this order an appeal bond signed by the respondent, the Board of Trade of the City of Chicago, with a surety approved by this court in the usual form in the sum of One Thousand Dollars that upon the giving of said appeal bond the same shall operate as a supersedeas.

Enter.

K. M. LANDIS,
Judge.

And on to-wit: the 17th day of August, 1921, come the Board of Trade of the City of Chicago, a corporation, as principal and John Hill, Jr., as surety, and filed in the Clerk's office of said Court, in said entitled cause, a certain Bond in words and figures following, to-wit:

Appeal Bond.

Filed Aug. 17, 1921.

Know All Men By These Presents: That we, the Board of Trade of the City of Chicago, a corporation, as principal, and John Hill,

Jr., as surety, are held and firmly bound unto E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson, Bankrupt, in the full and just sum of One Thousand ($1,000) Dollars, to be paid to said E. H. Johnson as Trustee, for which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents:

Sealed with our seals and dated this 16th day of August, A. D. 1921.

Whereas, lately and on the 27th day of July, 1921, the District Court of the United States for the Northern District of Illinois, Eastern Division, in a proceeding pending in said court in the matter of the bankruptcy of Wilson F. Henderson, and upon the petition filed by said Johnson as Trustee against said Board of Trade of the City of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John B. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., did enter a final order granting the prayer of said peti-
49 tion, and said Board of Trade of the City of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John B. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., have obtained an order of appeal from said court to reverse said order in said proceeding, and a citation directed to the said Johnson as Trustee citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit thirty (30) days from and after the date of said citation. Now the condition of the above obligation is such that if the said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, George S. Bridge and John B. Leonard, doing business as Bridge & Leonard, and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., shall duly prosecute their bill with effect, and answer all damages and costs if they shall fail to make good their plea; then the above obligation to be void, else to remain in full force and effect.

[SEAL.] BOARD OF TRADE OF THE CITY OF CHICAGO,
By JOSEPH P. GRIFFIN,
President.

Attest:
WALTER S. BLOUNEY,
Assistant Secretary.

JOHN HILL, JR. [SEAL.]

O. K.
K. M. L.

O. K.
KRAFT, KRAFT & ERSKINE,
Attys. for Trustee.

(Endorsed:) Filed Aug. 17, 1921. John H. R. Jamar, Clerk.

50 *Præcipe for Transcript of Record.*

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

To John H. R. Jamar, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You will please prepare and certify a transcript of the following proceedings in the above entitled cause:

(1) Petition to have Henderson adjudged a bankrupt;

(2) Order of February 24, 1920, adjudging Henderson a bankrupt;

(3) Order or other papers showing E. H. Johnson appointed as trustee;

(4) Petition of trustee filed June 10, 1920;

(5) Order to show cause entered therein;

(6) Plea of Board of Trade to the jurisdiction filed to the said petition of Trustee Johnson on the 16th of June, 1920;

(7) Order of June 21, 1920, permitting the trustee to amend his petition;

(9) Order of May 2, 1921, overruling the said plea to the jurisdiction;

(10) Order of July 25, 1921, allowing petitioner to file amendment and supplemental petition;

(11) Said amendment and supplement;

(12) Plea to the jurisdiction of the court filed by the Armour Grain Company, et al., on the 25th of July, 1921.

(13) Order entered July 25, 1921, denying said plea of Armour Grain Company, et al.,

(14) Answer of the Board of Trade filed July 25, 1921;

(15) Answer of Armour Grain Company, et al., filed July 25, 1921;

(16) Order entered July 29, 1921, granting the prayer of the petition of E. H. Johnson, Trustee,

(17) Stipulation of parties filed July 29, 1921;

51 (18) Order dismissing the proceeding as to Board of Trade Clearing House;

(19) Petition for allowance of appeal;

(20) Assignment of errors;

(21) Order allowing appeal;

(22) Appeal Bond;

Præcipe.

ROBBINS, TOWNLEY & WILD,
Solicitors for Certain Respondents.

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

Certificate of Clerk.

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Præcipe filed in this Court in the cause entitled In the Matter of the Bankruptcy of Wilson F. Henderson, No. 28256, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 19th day of August A. D. 1921.

[SEAL.] JOHN H. R. JAMAR,
Clerk.

52 Filed Sept. 26, 1921.

In the United States Circuit Court of Appeals for the Seventh Judicial Circuit.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Petition for Review under Section 24*b* of the Bankruptcy A-.

The Answer of E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson to the Petition of the Board of Trade of the City of Chicago, et al.

This respondent saving and reserving unto himself all right of objection and exception to the many errors, imperfections and informalities in the said petition contained for answer thereunto says: That he admits that he was duly appointed and is now acting as Trustee in bankruptcy of the Estate of Wilson F. Henderson, who was adjudged a bankrupt on February 24, 1920.

This respondent further answering admits that the Board of Trade of the City of Chicago is a corporation existing under a special charter of the State of Illinois now conducting a commercial exchange in the City of Chicago; he admits that Armour Grain Company is a corporation engaged in the purchase and sale of grain operating upon said Board of Trade; and that all other of the petitioners are members of said Board of Trade; but this respondent denies that said Armour Grain Company is, under the rules of said Board of Trade, entitled to all of the rights and privileges accorded to individual members of said Board; and respondents says that the only rights and privileges of said corporation are those enumerated and prescribed by the rules of said Board of Trade, as said rules are included and shown in the petition of this respondent and the answers of the petitioners herein in the proceedings of the District Court here under review.

This respondent further answering admits that the bankruptcy petition against said Wilson F. Henderson was filed on January 24, 1920, and thereafter on February 24, 1920, said Wilson F. Henderson was adjudged a bankrupt, and that on March 20, 1920,
53 this respondent was duly appointed the Trustee in bankruptcy, all as averred in said petition; he further admits that on June 10, 1920, this respondent filed his petition in the said District Court substantially as averred by the petition herein and as will more fully appear from copy of the said petition in the transcript of record filed herein.

This respondent further answering admits that the bankruptcy petition against said Wilson F. Henderson was filed on January 24, 1920, and thereafter on February 24, 1920, said Wilson F. Hender-

son was adjudged a bankrupt, and that on March 30, 1920, this respondent was duly appointed the Trustee in bankruptcy, all as averred in said petition; he further admits that on June 10, 1920, this respondent filed his petition in the said District Court substantially as averred by the petition herein and as will more fully appear from copy of the said petition in the transcript of record filed herein.

This respondent further answering admits that on June 10, 1920, an order was entered by the District Court for a rule to show cause pursuant to the prayer of said petition, and that on June 16, 1920, said Board of Trade in answer to said rule filed its plea to the jurisdiction of said District Court substantially for the reasons indicated and as averred in the petition herein, and that said plea was in fact overruled by the District Court by its order duly entered of record on May 2, 1921; this respondent further admits that on July 25, 1921, all other of the petitioners herein filed their plea to the jurisdiction of the District Court as averred and which plea was on said date overruled by the District Court; this respondent further admits that on July 25th, 1921, he filed an amendment and supplement to his petition in the District Court by leave of said Court, substantially as averred, and that there was filed instanter by all of the petitioners herein their answer to the petition of this respondent as so amended and supplemented.

This respondent further answering admits that said proceedings thereupon and thereafter came on for hearing upon said petition of this respondent as so amended and supplemented and upon the answers of all of the petitioners herein, and that said cause was heard by said District Court as upon the bill and answer, all material facts set forth therein thereby being admitted by the respective parties; and this respondent admits that on July 27, 1921, the said District Court entered its order granting the prayer of respondents petition, all as averred by the petition herein, and as will more
54 fully appear from the transcript of record of the District Court filed herein.

Further answering this respondent denies, however, that the said judgment order, or decree, of the said District Court made and entered on July 27, 1921, being the order now sought to be reviewed and revised, was erroneous in any of the several respects as averred by the petition herein.

Further answering this respondent shows that the several pleas filed by the petitioners herein to the jurisdiction of said District Court were respectively overruled by the orders of the said District Court duly entered May 2, 1921 and July 25, 1921, and that said orders are not now before this Court under the petition herein to be reviewed and revised, and as a matter of law cannot now be considered by this Court; and further answering this respondent says that the District Court did not in and by its order of July 27, 1921, overrule the said pleas to the jurisdiction of said Court, and that said order is not therefore erroneous in such respect and for not dismissing the petition of your respondent under said pleas; and this respondent further answering says that after the entry of said orders of the Dis

trict Court on May 2, 1921 and July 25, 1921, respectively, the said petitioners herein and all of them did thereafter file their answers to the petition of your respondent in said District Court and did then and there, and by reason thereof waive any right that they might or could have had under their said pleas to the jurisdiction and by the filing of said answers did thereby appear generally in said cause and in said court for all purposes, thereby conferring upon said Court jurisdiction to proceed therewith; wherefore, your respondent says that as a matter of law no question of jurisdiction under said pleas of the petitioners herein is now before this Court for its consideration;

Further answering this respondent now specifically denies that the said order of the District Court made and entered on July 27th, 1921, was erroneous in that the said Court found and held——

(1) That the court had jurisdiction in said cause and in not dismissing said petition for want of jurisdiction because your respondent shows that as a matter of law that the said District Court did have jurisdiction of the said petition with full power to enter the order therein entered by it.

(2) That the membership of the Bankrupt, Wilson F. Henderson, in the Board of Trade of the City of Chicago, was property within the meaning of the Bankrupt Act, and that said membership now belongs to the respondent herein.

55 (3) That Wilson F. Henderson had full power and right on January 24, 1920 to transfer his said membership to any person eligible for membership in said Board of Trade.

(4) That on January 24, 1920 there were no claims or objections filed or pending based upon, outsanding, unadjusted or unsettled claims or contracts and that said membership was not in any way impaired or forfeited.

(5) In holding that upon the appointment of your respondent as Trustee of said Bankrupt he became the holder and owner of said membership for the purpose of transfer and disposition thereof.

(6) That the claims against Lipsey & Company, a corporation, as set out in the answer of said Board of Trade did not constitute outstanding unadjusted and unsettled claims or contracts against said Henderson proper to be filed as objections to the transfer of his membership at any time.

(7) That no such claims or objections had been filed prior to the petition in bankruptcy of said Henderson on January 24, 1920, but respondent says that this is a question of fact and not of law.

(8) That the claim of the Board of Trade Clearing House did not constitute a valid claim or lien against the transfer of said membership.

(9) That after the adjudication of bankruptcy and the appointment of said Trustee, said Henderson ceased to be a member of said

Board of Trade and that his membership by operation of law passed into the said Trustee.

(10) That the proceedings for the suspension of said Henderson filed on June 17, 1920, were unavailing and invalid and did not constitute an impairment of said membership as against said Trustee.

(11) That said membership of said Henderson now belongs to said Trustee free and clear of any claims, objections, liens or otherwise under the rules of the Board of Trade of the City of Chicago, and that said Trustee should hold the same for sale and transfer for the benefit of said estate free and clear of any claims, objections, impairment or otherwise as against said Henderson.

(12) That the claims of the petitioners herein are invalid as against the membership of said Henderson and the rights of your respondent as such Trustee.

(13) In ordering that the petitioners herein, the Board of Trade of the City of Chicago disallow and refuse to recognize for any purpose as against said Trustee, the respondent herein, the said claims mentioned in the answer of said Board of Trade and in
56 ordering that said Board of Trade should not allow any other claims or proceedings as objections, liens, or otherwise as against said trustee upon or against said Trustee, or upon and against the membership of said Henderson.

(14) In directing the Board of Trade to disregard and dismiss the proceedings of the petitioner herein, Bridge and Leonard, for the suspension of said Henderson and to take no action in said proceedings which would impair or forfeit that membership.

(15) In ordering the Board of Trade to permit the transfer of said membership upon the application of the Trustee but of no other person.

(16) In ordering said Trustee to sell and dispose of said membership for the benefit of said estate.

(17) Directing the Board of Trade to recognize, accept and enter upon its records said E. H. Johnson, Trustee, the respondent herein, as the owner of the membership of said Wilson E. Henderson, the bankrupt.

(18) In not dismissing the petition of the Trustee.

This respondent further answering says that the said order of the District Court of July 27, 1921, cannot now be questioned in this proceeding upon any question of fact (as the facts of this case are set up in the petition of your respondent in the District Court the answers thereto, and the said order of the District Court finding such facts) under any of the alleged errors averred and specifically enumerated by the petition herein, many of which assignments of error do in fact relate to the findings of fact by the district court; but your respondent shows that the only questions of law involved in

the proceedings herein as to which said order of the district court may properly be considered and reviewed by this court may be summarized as follows:

(1) Whether the district court had jurisdiction to consider and pass upon the petition of your respondent in said court as against the petitioners herein, Board of Trade of the City of Chicago, et al, if in fact such question can now be said to be before the Court for consideration under the state of the record, which your respondent in no wise admits, but specifically denies for the reasons hereinabove set forth; but respondent avers that as a matter of law the district court did in any event have jurisdiction of the subject matter and parties of these proceedings.

(2) Whether the membership of the bankrupt in the
57 Board of Trade of the City of Chicago was property within the meaning and intent of the Bankrupt Act, which passed to and became a part of the estate of said bankrupt in the hands of your respondent as trustee; respondent submits that under the Act of Congress, and the decisions of this Court and the United States Supreme Court such membership is property subject only — the rules of the Board of Trade of the City of Chicago.

(3) Whether under a proper interpretation of the rules of the Board of Trade of the City of Chicago, as shown by the petition and answers before the Court, and under the facts and circumstances therein averred and admitted, this respondent as trustee took the said membership of the bankrupt free and clear of any and all claims with full right to sell and dispose of the same for the benefit of the bankrupt estate aforesaid; this respondent insists that as a matter of law he now holds said membership as property of said estate, that under the rules of the Board of Trade the same is free and clear of all claims, conditions, liens and impairment of any character and that he has full right and power under the law and the rules of said Board to sell and dispose of said membership to any one eligible for membership.

This respondent now having answered the said petition to review and revise denies that the petitioners are entitled to the relief, or any part thereof, prayed for therein and he therefore prays that he may be hence dismissed with this reasonable costs and charges in his behalf most wrongfully sustained.

E. H. JOHNSON,
Trustee.
F. WILLIAM KRAFT AND
ROBERT N. ERSKINE,
Attorneys for Trustee.

58 STATE OF ILLINOIS,
County of Cook, ss:

I, E. H. Johnson, respondent mentioned and described in the fore going answer do hereby make solemn oath that the statement of fact contained in the foregoing answer is true according to the best o my knowledge, information and belief.

E. H. JOHNSON.

Subscribed and sworn to before me this 26th day of September A. D. 1921.

[SEAL.] JAMES McKEAG,
Notary Public.

(Endorsed:) #3028 United States Circuit Court of Appeal Board of Trade of the City of Chicago et al. Petitioner, vs. E. H Johnson, Trustee Respondent. Answer of Trustee filed Sep. 26, 1921 Edward M. Holloway, Clerk. Kraft, Kraft & Erskine Attorneys & Counselors at Law 517-520 Harris Trust Building 111 W Monroe Street Chicago, Ill.

58½ *Placita.*

Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on 29th day of July, in the year of our Lord one thousand nine hundred and 21, being one of the days of the regular July Term of said Court begun Monday, the 4th day of July, and of our Independence the 146th year.

Present:

Honorable Kenesaw M. Landis.
John J. Bradley, U. S. Marshal.
John H. R. Jamar, Clerk.

59 And afterwards, to wit, on the 29th day of July, 1921 being one of the days of the regular July term of said Court in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

Order or Decree of July 29, 1921.

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois.

Gen. No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

This cause now coming on to be heard upon the verified petition of E. H. Johnson, Trustee in bankruptcy of Wilson F. Henderson, Bankrupt, filed June 10, 1920, and the amendment and supplement thereto heretofore filed by leave of Court, said petition asking to have the membership of said bankrupt in the Board of Trade of the City of Chicago declared an asset of said bankrupt's estate free and clear of any and all claims, and upon a rule to show cause heretofore entered upon said petition against the Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Co., and Bridge & Leonard, and upon the answers filed by all of said parties to said petition as amended and supplemented and to said rule to show cause against them, and this cause having been submitted to the Court by all parties thereto upon the petition of the Trustee, as amended and supplemented, and the answers thereto of all said parties, and without evidence being heard, and the Court having examined and considered the petition and answers and all facts therein set forth, and the cause having been fully argued, and the Court being fully advised in the premises,

It Is Now Found, Considered And Determined By The Court that this Court has jurisdiction of the subject matter and of the parties hereto; that there is no dispute as to the material facts
60 in this case but all of the facts are as set forth in the petition, the amendment and supplement thereto and the answers to the petition as amended and supplemented; that, from the facts so appearing to the court, the said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Co., Board of Trade Clearing House and Bridge & Leonard, and each and all of them have failed by their answers to show cause in compliance with the previous order of this Court; that the membership of the bankrupt, Wilson F. Henderson, in the Board of Trade of the City of Chicago is property within the meaning of the bankruptcy Act, which has passed and now belongs to said E. H. Johnson, as Trustee, in bankruptcy of the estate of Wilson F. Henderson, Bankrupt; that prior to the filing of the petition in bankruptcy against Wilson F. Henderson and on January 24, 1920, the said Wilson F. Henderson owned and held said membership in his own name with full right and power which he might have exercised for his own benefit to transfer his said membership to any person eligible to membership in said Board of Trade, said bank-

rupt having complied with all of the rules of said Board and having duly posted on May 1, 1918, his application for the transfer of such membership more than ten days prior to January 24, 1920; that on January 24, 1920 there were no claims or objections filed or pending with, or that had been allowed by the Board of Trade of the City of Chicago based upon outstanding, unadjusted or unsettled claims or contracts against said Wilson F. Henderson filed within ten days of the posting of his application for the transfer of membership, and that the membership of said bankrupt was not in any way impaired or forfeited, nor were any proceedings then pending for the discipline of said bankrupt; that upon the appointment of E. H. Johnson, as Trustee of said bankrupt and following the adjudication of bankruptcy said Trustee became the owner and holder of said membership for the purpose of the sale, transfer and disposition thereof for the benefit of the bankrupt estate with all of the rights and powers which the bankrupt might have exercised for the transfer thereof; that the claims against the corporation known as Lipsey & Company as set forth in the answers herein do not constitute outstanding, unadjusted or unsettled claims or contracts against the bankrupt herein proper to be filed as objections to the transfer of said bankrupt's membership at any time
61 and that no such claims or objections had been filed prior to the filing of the petition in bankruptcy against Wilson F. Henderson on January 24, 1920; that the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Co., were claims against Lipsey & Company and were not proper to be filed or recognized by the Board of Trade of the City of Chicago and were filed subsequent to January 24, 1920, and none of said claims, or any other claims against Lipsey & Company as set forth in the answers herein constitute valid objections, claims or liens upon or against the said membership or the transfer thereof; that the claim or objection of the Board of Trade Clearing House was not filed within ten days after the posting of the application for transfer of such membership and does not constitute a valid claim or lien thereon or against the transfer thereof; that the only right or remedy which creditors of the corporation known as Lipsey & Company might have, or could have against said Wilson F. Henderson as an officer of said corporation under the rules of the Board of Trade of the City of Chicago was to have said Henderson disciplined in accordance with said rules, but no proceedings for the purpose or object of disciplining said Henderson were pending on January 24, 1920; that after the adjudication of Henderson as a bankrupt and the appointment of a trustee said Henderson ceased to be a member of the Board of Trade of the City of Chicago, his membership having thereupon passed to the Trustee by operation of law; that the proceedings for the suspension of said Henderson filed on June 17, 1921 by Bridge & Leonard were filed long after these proceedings in bankruptcy were pending, after the adjudication in bankruptcy thereof after the trustee had become possessed of and the owner for the purpose of sale of said membership and after said Henderson had ceased to be a member of said Board, and said proceedings were entirely unavailing and invalid and do not constitute any lien

or claim, objection or impairment of said membership as against the Trustee herein.

It Is Therefore Ordered, Adjudged And Decreed that the membership of said bankrupt, Wilson F. Henderson, in the Board of Trade of the City of Chicago is property within the meaning of the Bankruptcy Act and which has passed and now belongs to said E. J. Johnson, as Trustee in bankruptcy of the assets of said
62 Wilson F. Henderson, and that said membership has passed and now belongs to said Trustee free and clear of any claims, objections, liens or otherwise under the rules of said Board of Trade of the City of Chicago, and that said Trustee shall hold and now does hold the same for sale and transfer for the benefit of said estate free and clear of any claims, objections, impairment or otherwise as against said Wilson F. Henderson.

It is further ordered, adjudged and decreed that the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Co. Board of Trade Clearing House, and Bridge & Leonard are hereby overruled and disallowed and declared invalid as against the membership of said Wilson F. Henderson in the Board of Trade of the City of Chicago, and the rights of E. H. Johnson, Trustee in bankruptcy of Wilson F. Henderson; and the said Board of Trade of the City of Chicago is hereby ordered to disallow and to refuse to recognize for any purpose as against E. H. Johnson, Trustee, the said claims and shall not permit the filing of any other claims, or proceedings as objections, liens or otherwise as against E. H. Johnson, Trustee, upon or against the said membership now standing in the name of Wilson F. Henderson; said Board of Trade of the City of Chicago is hereby ordered to disregard or dismiss proceedings of Bridge & Leonard for the suspension of said Wilson F. Henderson and shall not conduct any hearing or permit any further proceedings for the discipline of said Henderson, or take or permit any action of any kind whatever hereafter as against the rights of E. H. Johnson, Trustee, as herein determined, at the petition of Bridge & Leonard or any other person or corporation, which might or could or shall have as its object the impairment or forfeiture of said membership; and said Board of Trade is also hereby ordered to permit the transfer of said membership upon the application of the trustee, but of no other person, to any person eligible to membership in accordance with its rules relating to the transfer of memberships.

It is further ordered, adjudged and decreed that in order to enable said E. H. Johnson as said Trustee to sell and dispose of said membership for the benefit of said estate, the said Board of Trade of the City of Chicago shall recognize, accept and enter upon its records said E. H. Johnson, Trustee, as owner of the said member-
63 ship of said Wilson F. Henderson in and upon said Board of Trade of the City of Chicago, but for the purpose of sale only.

Enter: KENESAW M. LANDIS,
Judge.

O. K. as to form.
H. S. ROBBIN.

And on, to wit, the 12th day of August, 1921, came the respondents by their attorney and filed in the Clerk's office of said Court a certain Petition for Allowance of Appeal, in words and figures following, to wit:

Petition for Appeal.

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Petition for Allowance of Appeal.

Board of Trade of the city of Chicago, Armour Grain Company, a corporation; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., respondents to the petition of E. H. Johnson, Trustee, filed in this court on the 10th of June, 1920, conceiving themselves to be aggrieved by the order and decree entered in this court on the 27th day of July, 1921, do hereby appeal from said order and decree to the United States Circuit Court of Appeals of the Seventh Circuit for the reasons specified in the assignment of errors filed herewith, and they pray that this appeal may be allowed, and that the transcript of the record, stipulations
61 and other records herein be transmitted forthwith to the United States Circuit Court of Appeals for the Seventh Circuit.

BOARD OF TRADE OF THE CITY OF CHICAGO,
ARMOUR GRAIN COMPANY,
GEORGE A. HELLMAN,
GEORGE S. BRIDGE,
JOHN R. LEONARD,
JAMES E. BENNETT,
FRANK J. SAIBERT,
FRANK F. THOMPSON,
FRANK A. MILLER,
By ROBBINS, TOWNLEY & WILD,
Their Solicitors.

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

And on, to wit, the 12th day of August, 1921, came the respondents by their attorneys and filed in the Clerk's office of said Court a certain Assignments of Error in words and figures following, to wit:

Assignment of Error.

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Assignments of Error.

Now come the respondents, Board of Trade of the city of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., and file the following assignment of errors, upon which they rely for grounds for reversal on the appeal in the above entitled cause:

That the District Court erred—

1. In overruling and not sustaining the pleas to the jurisdiction of this court as set forth by these respondents, and in not dismissing said petition for want of jurisdiction:

2. In holding the membership of the bankrupt, Wilson F. Henderson, to be property within the meaning of the Bankrupt Act, and in also holding that said membership now belongs to the said E. H. Johnson as trustee in bankruptcy:

3. In adjudging that Wilson F. Henderson had full power and right on January 24, 1920, to transfer his said membership to any person eligible for membership in said Board:

4. In adjudging that on January 24, 1920, there were no claims or objections filed or pending, based upon outstanding, unadjusted or unsettled claims or contracts, and that said membership was not in any way impaired or forfeited;

5. In holding that upon the appointment of E. H. Johnson as Trustee of said bankrupt he became the owner and holder of said membership for the purpose of transfer and disposition thereof;

6. In adjudging that the claims against Lipsey & Company set out in the answer of said Board of Trade do not constitute outstanding, unadjusted or unsettled claims or contracts against said Henderson proper to be filed as objections to the transfer of his membership at any time;

7. In adjudging that no such claims or objections had been filed prior to the petition in bankruptcy of said Henderson on January 24, 1920;

8. In holding that the claims of the Board of Trade Clearing House did not constitute a valid claim or lien against the transfer of said membership;

9. In adjudging that after the adjudication of bankruptcy and the appointment of said trustee, said Henderson ceased to be a member of said Board of Trade and that his membership by operation of law passed into said trustee;

10. In adjudging that the proceedings for the suspension of said Henderson filed on June 17, 1921, were unavailing and invalid and did not constitute an impairment of said membership as against said trustee;

11. In adjudging that said membership of said Henderson now belongs to said trustee free and clear of any claims, objec-
66 tions, liens or otherwise under the rules of the Board of Trade of the City of Chicago, and that said trustee should hold same for sale and transfer for the benefit of said estate free and clear of any claims, objections, impairment or otherwise as against said Henderson;

12. In adjudging that the claims of these respondents were invalid as against the membership of said Henderson and the rights of said Johnson as trustee;

13. In entering the decree ordering that respondent, Board of Trade of the City of Chicago, disallow and refuse to recognize for any purpose as against said trustee the said claims mentioned in said answer of the respondent, Board of Trade, and in ordering that said Board of Trade shall not allow any other claims or proceedings as objections, liens or otherwise against said trustee upon or against membership of said Henderson;

14. In directing said Board of Trade to disregard and dismiss the proceedings of the respondent, Bridge & Leonard for the suspension of said Henderson or take no action in said proceedings which would impair or forfeit that membership;

15. In ordering the Board of Trade to permit the transfer of said membership upon the application of the trustee but of no other person;

16. In ordering said trustee to sell and dispose of said membership for the benefit of said estate;

17. In directing the Board of Trade to recognize, accept and enter on its records said E. H. Johnson, Trustee, as the owner of said membership of said Henderson;

18. In not dismissing the petition of the trustee.

ROBBINS, TOWNLEY & WILD,
Solicitors for said Respondents.

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

And on to-wit: the 17th day of August, 1921, come the Board of Trade of the City of Chicago, a corporation, as principal and John Hill, Jr., as surety, and filed in the Clerk's office of said court, in said entitled cause, a certain Bond, in words and figures following, to-wit:

Filed Aug. 17, 1921.

Know All Men By These Presents:

That we, the Board of Trade of the City of Chicago, a corporation, principal, and John Hill, Jr., as surety, are held and firmly bound unto E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson, Bankrupt, in the full and just sum of One Thousand ($1,000) Dollars, to be paid to said E. H. Johnson as Trustee, for which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents:

Sealed with our seals and dated this 16th day of August, A. D. 1921.

Whereas, lately and on the 27th day of July, 1921, the District Court of the United States for the Northern District of Illinois, Eastern Division, in a proceeding pending in said court in the matter of the bankruptcy of Wilson F. Henderson, and upon the petition filed by said Johnson as Trustee against said Board of Trade of the City of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., did enter final order granting the prayer of said petition, and said Board of Trade of the City of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., have obtained an order of appeal from said court to reverse said order in said proceeding, and a citation directed to the said Johnson as Trustee citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit thirty (30) days from and after the date of said citation. Now the condition of the above obligation is such that if the said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, George S. Bridge and John R. Leonard, doing business as Bridge & Leonard, and James E. Bennett, Frank J. Sai-

bert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., shall duly prosecute their bill with effect, and answer all damages and costs if they shall fail to make
68 good their plea; then the above abligation to be void, else to remain in full force and effect.

[SEAL.] BOARD OF TRADE OF THE CITY OF CHICAGO,
By JOSEPH P. GRIFFIN,
President.

Attest:
WALTER S. BLOWNEY,
Assistant Secretary.

JOHN HILL, JR. [SEAL.]

O. K.
K. M. L.

O. K.
KRAFT, KRAFT & ERSKINE,
Attys. for Trustee.

(Endorsed:) Filed Aug. 17, 1921. John H. R. Lamar, Clerk.

And afterwards, to wit, on the 12th day of August, 1921, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

Order of Aug. 12, 1921.

UNITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON; Petition of E. H. JOHNSON, Trustee, Filed June 10, 1920.

Order.

The respondents in the above petition having filed their certain petition of appeal on assignments of error, now, on motion of counsel for respondents, it is
69 Ordered that an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the final order entered in the above entitled proceedings on the 27th day of July, 1921, be and the same is hereby allowed, and that a certified tra

script of the record of the proceedings be forthwith transmitted to the said Circuit Court of Appeals; and it is

Further Ordered that the defendants file within ten (10) days from the entry of this order an appeal bond signed by the respondent, the Board of Trade of the City of Chicago, with a surety approved by this court in the usual form in the sum of One Thousand Dollars; that upon the giving of said appeal bond the same shall operate as a supersedeas.

Enter.

K. M. LANDIS,
Judge.

Notice of Præcipe.

United States of America,
Northern District of Illinois,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of Wilson F. Henderson.

Notice.

To Kraft, Kraft & Erskine, Solicitors for E. H. Johnson, Trustee, 517 Harris Trust Building, Chicago, Illinois:

Please Take Notice that on Friday, August 12, 1921, at 10 a. m., we shall appear before John H. R. Jamar, Clerk of the United States District Court for the Northern District of Illinois, in room 650 of the Federal Building, Chicago, Illinois, and present a præcipe for a record to be filed in the United States Circuit Court of Appeals for the Seventh Judicial Circuit in connection with the petition to review and revise in the above entitled cause, a copy of which præ-
70 cipe is hereto attached; at which time and place you may appear if you see fit.

August 11, 1921.

ROBBINS, TOWNLEY and WILD,
Solicitors for Appellant.

Received a copy of the above notice, together with a copy of said præcipe, this 11th day of August, 1921.

KRAFT, KRAFT & ERSKINE,
Solicitors for Appellees.

Præcipe for Transcript of Record.

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Gen. No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

To John H. R. Jamar, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You will please prepare and certify a transcript of the following proceedings in the above entitled cause:

(1) Order entered July 29, 1921, granting the prayer of the petition of E. H. Johnson, Trustee;

(2) Petition for appeal;

(3) Assignments of error;

(4) Order allowing appeal;

(5) Appeal Bond;

ROBBINS, TOWNLEY & WILD,
Solicitors for Appellants.

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

71 *Certificate of Clerk.*

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Præcipe filed in this Court in the cause entitled In the Matter of the Bankruptcy of Wilson F. Henderson, No. 28256, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 19th day of August A. D. 1921.

[SEAL.] JOHN H. R. JAMAR,
Clerk.

72 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from one to fifty-eight inclusive, contain a true copy of the printed petition to review and revise, the answer thereto and the exhibit to petition to review and revise in cause No. 3028, and that the foregoing printed pages numbered from one to fourteen, inclusive, contain a true copy of the printed record in cause No. 3034, both of the foregoing printed under my supervision and upon which causes No. 3028 and No. 3034 in the matter of Wilson F. Henderson, Bankrupt, Board of Trade of the City of Chicago, et al., Petitioners, appellants vs. E. H. Johnson, Trustee, etc., respondent, appellee, were heard and determined October Term, 1921, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this fourteenth day of June, 1922.

[Seal of United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

73 At the regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit, on the fifth day of October, 1920, of the October Term, in the year of our Lord one thousand nine hundred and twenty, and of our Independence the one hundred and forty-fifth.

And afterwards, to-wit: On the twelfth day of August, 1921, in the October Term last aforesaid, there was filed in the office of the clerk of this court a certain notice, which said notice is in the following words and figures, to-wit:

In the United States Circuit Court of Appeals for the Seventh Judicial Circuit.

3028.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Petition for Review under Section 24*b* of the Bankrupt Act.

Notice.

To Kraft, Kraft & Erskine,
Solicitors for E. H. Johnson, Trustee,
517 Harris Trust Building,
Chicago, Illinois:

You will please take notice that on August 12, 1921, at 10 a. m., we shall appear before his Honor, Samuel Alschuler, in the
74 room usually occupied by him as a court room in the Federal Building, Chicago, Illinois, and present a petition to review and revise in the above entitled cause, and ask that an order be entered in accordance therewith, a copy of which petition is hereto attached; at which time and place you may appear if you see fit.

August 11, 1921.

ROBBINS TOWNLEY AND WILD,
Solicitors for Appellants.

Received a copy of the above notice, together with a copy of said petition, this 11th day of August, 1921.

KRAFT, KRAFT & ERSKINE,
Solicitors for Appellees.

Endorsed: Filed Aug. 12, 1921. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: On the twelfth day of August, 1921, in the October Term aforesaid, the following proceedings were had and entered of record, to-wit:

Friday, August 12, 1921.

Court met pursuant to adjournment.

Present:

Hon. Samuel Alschuler, Circuit Judge.
Edward M. Holloway, Clerk.

75 3028.

In the Matter of WILSON F. HENDERSON, Bankrupt; BOARD OF TRADE OF THE CITY OF CHICAGO, et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for petitioners in the above entitled cause, it is

Ordered that Board of Trade of the City of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., have leave to file their petition to review and revise a certain order entered on the 27th day of July, 1921, in the District Court of the United States for the Northern District of Illinois, Eastern Division, in the matter of the bankruptcy of Wilson F. Henderson, and upon the petition of E. H. Johnson, Trustee, and it is

Further Ordered that E. H. Johnson, Trustee, respondent to said petition, plead, answer and demur to said petition within 60 days from the date of this order; and it is

Further Ordered that no steps be taken to enforce said order pending the disposition of said petition before this court.

76 And afterwards, on the same day, to-wit: On the twelfth day of August, 1921, in the October term last aforesaid, there was filed in the office of the clerk of this court a stipulation, which said stipulation is in the following words and figures, to-wit:

In the United States Circuit Court of Appeals for the Seventh J
dicial Circuit.

3028.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson

Petition for Review under Section 24*b* of the Bankrupt Act.

Stipulation.

It is hereby stipulated between the parties in the above entitl
cause by their respective counsel that upon the filing of the petiti
to review and revise in said court an order may be entered to t
effect that no steps be taken to enforce said order of the lower cou
until the disposition of the petition to review and revise; and

It is further stipulated that no bond need be filed *in* by the pe
tioner in said cause.

Dated August 12, 1921.

ROBBINS, TOWNLEY & WILD,
Solicitors for Petitioners.
KRAFT, KRAFT & ERSKINE,
Solicitors for Trustee in Bankruptcy.

Endorsed: Filed Aug. 12, 1921. Edward M. Holloway, Cler

77 And afterwards, to-wit: On the thirteenth day of Augu
1921, of the October Term last aforesaid, came the petitione
by their counsel, Mr. Henry S. Robbins, and filed in the office of t
clerk of this court his appearance, which said appearance is in t
following words and figures, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1920.

No. 3028.

BOARD OF TRADE OF THE CITY OF CHICAGO et al., Petitioners,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson
Respondent.

The Clerk will enter my appearance as counsel for the petitione
HENRY S. ROBBINS,
1520-105 S. La Salle St.

Endorsed: Filed Aug. 13, 1921. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the fifteenth day of August, 1921, in the October Term last aforesaid, came the respondent, by his counsel, Mr. Robert N. Erskine and Mr. F. Wm. Kraft, and filed in the office of the clerk of this court their appearance, which said ap-
78 pearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1920.

No. 3028.

BOARD OF TRADE OF THE CITY OF CHICAGO et al., Petitioners,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson, Respondent.

The Clerk will enter my appearance as counsel for the respondent.

ROBERT N. ERSKINE,
F. WM. KRAFT,
111 W. Monroe St., Chicago.
Central 3873.

Endorsed: Filed Aug. 15, 1921. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the twenty-second day of August, 1921, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain exhibit to the petition to review and revise, which said exhibit appears on pages 6 to 51, inclusive, of the printed petition to review and revise in this cause certified herewith, and which is not copied here.

79 And afterwards, on the same day, to-wit: On the twenty-second day of August, 1921, there was filed in the office of the clerk of this court a certain stipulation, which said stipulation is in the following words and figures, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

3028.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al.

vs.

E. H. JOHNSON, Trustee.

Stipulation.

It is hereby stipulated by the parties in the above entitled cause that the transcript of record of the proceedings in the District Court of the United States for the Northern District of Illinois, Eastern

Division, in the matter of the bankruptcy of Wilson F. Henderson, which is filed in this court as an exhibit, filed in this court on the 12th day of August, 1921, a certain order entered by said District Court on the 27th day of July, 1921, in the matter of the bankruptcy of Wilson F. Henderson, shall be taken and deemed as a complete transcript of the proceedings of said District Court in the proceeding upon which the above entitled appeal is prosecuted, and that an order to that effect may be entered by said Circuit Court of Appeals.

ROBBINS, TOWNLEY & WILD,
Solicitors for Petitioner-.
KRAFT, KRAFT & ERSKINE,
Solicitor- for Respondent.

Endorsed: Filed Aug. 22, 1921. Edward M. Holloway, Clerk.

80 And afterwards, on the same day, to-wit: On the twenty-second day of August, 1921, the following further proceedings were had and entered of record, to-wit:

Monday, August 22, 1921.

Court met pursuant to adjournment.

Present:

Hon. Samuel Alschuler, Circuit Judge.
Edward M. Holloway, Clerk.

3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered that the transcript of record of the proceedings in the District Court of the United States for the Northern District of Illinois, Eastern Division, in the matter of the bankruptcy of Wilson F. Henderson, which is filed in this court as an exhibit, filed in this court on the 12th day of August 1921, a certain order entered by said District Court on the 27th day of July, 1921, in the matter of the bankruptcy of Wilson F. Henderson, shall be taken and deemed as a complete transcript of the proceedings of said District Court in the proceedings upon which the above entitled appeal is prosecuted.

81 And afterwards, to-wit: On the twenty-sixth day of August, 1921, there was filed in the office of the clerk of this court a certain answer to the petition to review and revise, which said answer appears on pages 52 to 58, inclusive, of the printed petition to review and revise certified herewith, and which is not copied here.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit on the fourth day of October 1921, of the October Term in the year of our Lord one thousand nine hundred and twenty-one and of our Independence the one hundred and forty-sixth.

And afterwards, to-wit: On the fourth day of October, 1921, of the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, October 4, 1921.

Court opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge Presiding.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Edward M. Holloway, Clerk.
John J. Bradley, Marshal.

82 Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

3034.

In the Matter of WILSON F. HENDERSON, Bankrupt.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of the Board of Trade of the City of Chicago, a corportation, one of the petitioners in the first of the above entitled causes, and one of the appellants in the second above entitled cause, and all other parties to both of said causes consenting, it is

Ordered that the two above entitled causes be consolidated for hearing in this court.

And afterwards, to-wit: On the third day of January, 1922, of the October Term last aforesaid, the following further proceed-
83 ings were had and entered of record, to-wit:

Tuesday, January 3, 1922.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge Presiding.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Claude Z. Luse, District Judge.
Edward M. Holloway, Clerk.
Robert R. Levy, Marshall.

Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee, etc.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is now here ordered that this cause be, and the same is hereby set down for hearing Thursday, January 26, 1922.

84 And afterwards, to wit: On the twenty-sixth day of January, 1922, of the October Term last aforesaid, the following further proceedings were had and entered of record, to wit:

Tuesday, January 26, 1922.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Edward M. Holloway, Clerk.
Robert R. Levy, Marshal.

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge.

3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee, etc.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the petition to review and revise an order

of the District Court of the United States for the Northern
85 District of Illinois, Eastern Division, the answer thereto, the briefs of counsel and on oral arguments by Mr. Henry S. Robbins, counsel for petitioners, and by Mr. Robert N. Erskine, counsel for respondent, and the court having heard the same takes this matter under advisement.

And afterwards, to wit: On the thirteenth day of May, 1922, there was filed in the office of the clerk of this court a certain opinion, which said opinion is in the following words and figures, to wit:

86 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1921, April Session, 1922.

No. 3028.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al., Petitioners,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of WILSON F. HENDERSON, Respondent.

Petition for Review under Sec. 24*b* of the Bankruptcy Act.

No. 3034.

BOARD OF TRADE OF THE CITY OF CHICAGO, et al., Appellants,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of WILSON F. HENDERSON, Appellee.

Appeal from the District Court for the Northern District of Illinois, Eastern Division.

Before Alschuler, Evans, and Page, Circuit Judges.

Opinion by Page, Cir. J.

The trustee in bankruptcy of the estate of one Henderson filed his petition in the United States District Court for the Eastern Division of the Northern District of Illinois, the court of adjudication, against the Board of Trade of the city of Chicago, herein called Board, and subsequently brought in as parties, by amendment, the creditors of Lipsey & Company, herein called Creditors, praying that the Board be required by some appropriate order to recognize the rights of the trustee, as such, in and to Henderson's membership.

On a rule to show cause, after pleas to the jurisdiction were overruled, a full answer by the Board was filed, and adopted by the Creditors. Other than as covered by the petition, as amended, and

the answers, there are no material facts, and on the pleadings the matter was heard and decided.

The Board was created by a special charter from the state of Illinois, and conducts an exchange in Chicago, where its
87 members trade in farm and other products. It adopted the rules shown in the margin.*

*Rule IV, Sec. 7. When any member of this Association has been duly convicted of failure to comply with the terms of any business obligation or with the award of any Committee of Arbitration or Committee of Appeals, made in conformity with the rules and regulations of this Association, he shall be suspended from all privileges of the Board of Trade of the City of Chicago until all his outstanding obligations to members of the said Board of Trade shall have been settled, when he may, upon application to the Board of Directors, and upon stating under oath that he has settled all such outstanding obligations, be reinstated. Notice of all applications for reinstatement shall be posted upon a properly designated bulletin in the Exchange Hall for at least fifteen days prior to the hearing on such application by the Board of Directors. * * *

Sec. 9. When any member of the Association shall be guilty of a willful violation of any business contract or obligation and shall neglect or refuse to equitably and satisfactorily adjust and settle the same, or when any member shall willfully neglect or refuse to comply promptly with the award of any committee of arbitration or committee of appeals, rendered in conformity with the rules, regulations and by-laws of the Association, he shall be suspended from all the privileges of this Association until such contract or obligation is satisfactorily adjusted and settled, or such award is performed or complied with. * * *

Sec. 17. No member shall be censured, suspended or expelled under this Rule, without an examination of the charges against him by the Board of Directors, nor without having an opportunity to be heard in his own defense. No examination shall take place until notice has been served on the accused member, or his firm, accompanied by a copy of the charges against him or them, in writing. Such notice may be served upon the accused personally, by the Secretary or any of his assistants, or it may be left at or mailed to the accused at his ordinary place of business or residence; in either of which cases the notice shall be considered sufficient, and the examination may proceed whether the accused is present or not.

Rule X, Sec. 2. Every member shall be entitled to transfer his membership when he has paid all assessments due, and has against him no outstanding unadjusted or unsettled claims or contracts held by members of this Association, and said membership is not in any way impaired or forfeited, upon the payment of two hundred and fifty dollars, to any person eligible to membership who may be approved for membership by the Board of Directors, after due notice by posting, as provided in Section 1 of this rule. The membership of a deceased member shall be transferable in like manner by his legal representative without the payment of the transfer fee. Prior to the transfer of any membership, application for such transfer shall be posted upon the bulletin of the exchange for at least ten days when, if no objection is made, it shall be assumed the member has no outstanding claims against him. * * *

Rule XXII, Sec. 11. No member shall give the name of a corporation as his principal on any trade or contract in any of the commodities bought and sold on this exchange, as enumerated in Sections 4 and 5 of Rule XIV, unless two executive officers of such corporation, bona fide and substantial stockholders, are members of this Association in good standing. In case the said corporation is accepted as a party to such trade or contract and defaults in the execution of the same, or fails to comply with the terms of any business obligation made in conformity with the rules and regulations of this Association on which the said corporation has become liable, the said executive officers, and such other officers and managers of such corporation as are members of this Association, shall be subject to be disciplined in the same manner as they are subject to be disciplined for failure to comply with the terms of any business obligation of their own.

88 Memberships are perpetual and every member is entitled to transfer his membership if he has paid all dues, etc., and his membership is not in any way impaired or forfeited, provided he has no "unsettled claims or contracts held by members of the Board." Application for transfer must be posted ten days, when, if no objection is made, it is assumed the member has no outstanding claims against him.

Henderson, on the date of adjudication, February 24, 1920, had filed an application for transfer, the ten days' time had run, objections had been filed and disposed of, and he was in good standing, free to transfer his membership.

The Board's brief says that corporations are not admitted to membership, but to permit them to transact business on the Board it has adopted the rule that no member shall give the name of a corporation as his principal on a trade unless two executive officers thereof, who are bona fide and substantial stockholders, are members of the Board, and in case the corporation defaults on any trade or obligation, then said executive officers and such other officers and managers of the corporation as are members of the Board shall be subject to be disciplined in the same manner as they are subject to be disciplined for failure to comply with the terms of their own business obligations. Under the rules, no disciplinary proceedings of any kind can be taken without notice and an opportunity to be heard. There is no rule by which the sale of a membership may be forced, and the Illinois courts hold that it cannot be reached or sold on execution. (Barclay v. Smith, 107 Ill. 349.)

Whether Henderson traded on the Board's exchange for his personal account does not appear, but he did not leave personal debts to other members growing out of trades on the exchange. Being an executive officer of Lipsey & Company, a corporation, he did make trades on the exchange for that corporation. Lipsey & Company is insolvent, but not in bankruptcy, and its creditors, who became such through unsettled trades made for it on the exchange by Henderson are here, as the Board's co-appellants, contesting the trustee's rights.

Two jurisdictional questions are raised: first, that the matter in dispute presents a "controversy" within the meaning of Sec-
89 tion 23* of the Bankruptcy Act, cognizable only in a plenary suit in a jurisdiction designated in said Section 23; second

*Sec. 23. (*a*) The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bakruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants. (*b*) Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant, except suits for the recovery of property under section sixty, subdivision *b;* section sixty-seven, subdivision *e;* and section seventy, subdivision *e.* (*c*) The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits of the offenses enumerated in this Act.

that the disposition of a membership is a matter wholly within the internal regulatory powers of the Board, over which no court has any power or jurisdiction. A third contention is made, viz., that a membership on the Board is not property that passes in bankruptcy.

(1). Every district court is a bankruptcy court (Item 8, Sec. 1, Bankruptcy Act), and has such jurisdiction at law and in equity as will enable it to exercise original jurisdiction in bankruptcy proceedings, to do many things, among which are:

"(6) bring in and substitute additional parties in proceedings in bankruptcy when necessary for the determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided; * * * (15) make such orders, issue such process and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act." (Sec. 2, Bankruptcy Act.)

The words "otherwise provided" refer to Section 23 of the Bankruptcy Act (Bardes v. Hawarden Bank, 178 U. S. 524 (535).

Those are really venue sections, in no sense limiting the very broad jurisdiction of the bankruptcy court, save only in regard to controversies to recover property or establish property rights between the trustee and parties who are strangers to the bankruptcy proceeding and who (1) have possession of the property, claiming ownership thereof or a lien thereon, or (2) who deny owing any money claimed by the trustee. In all such cases, not within the exceptions
90 of Section 23*b*, suits after bankruptcy may be brought only in those courts where they might have been brought had bankruptcy not intervened. That means only that the jurisdiction and venue in the Federal courts do not depend upon the character of the controversy, but upon the amount in controversy and the residence of the parties, as provided in the Judiciary Act.

Even if there is here a controversy of the character that required that the action shall be brought where it must have been brought if bankruptcy had not intervened, we are of opinion that it was properly brought in the court of adjudication, because, as shown by the pleadings, the jurisdictional amount is sufficient and the record and undenied statements made in open court show that at the time the bankruptcy proceedings were commenced the Board was resident in the district and division of the court of adjudication and Henderson was a citizen of the state of Florida.

Section 23*b* makes four exceptions to Section 23*a* as to where actions may be brought by the trustee, viz.,—with consent of the proposed defendant, and also under the circumstances stated in Sections 60*b*, 67*e* and 70*e*, the trustee may bring actions in the district court or in a state court. (Bardes v. Hawarden Bank, 178 U. S. 524; Babbitt v. Dutcher, 216 U. S. 102; Weidhorn v. Levy, 253 U. S. 273). It should be noted that when Bardes v. Hawarden Bank was decided Sections 23*a* and 23*b* of the Bankruptcy Act of 1898

were in force, and the words "circuit courts" were found in Section 23*a*, and the only exception in Section 23*b* was as to cases where consent of the proposed defendant was had as to the place where the suit was brought. When Babbitt v. Dutcher was decided, Section 23*b* had been amended so as to add, as exceptions to the general provision of Section 23*b*, suits arising under the circumstances stated in Sections 60*b* and 67*e*. When Weidhorn v. Levy was decided, Section 23*a* had been amended by substituting the word "district" for the word "circuit," and Section 23*b* by adding as an exception cases arising under Section 70*e*. Section 23*a* and 23*b* now read as amended in 1910.

If the Creditors named had any right whatever, it must be upon the theory that there was, by reason of the acceptance of the membership under the rules, some sort of hypothecation of the membership or some lien created on it in favor of creditors. This can only mean that the creditors must claim under the conditions
91 covered by Section 70*e*.* If, under the rules of the Board, there is, in favor of the Board, any right or lien upon a membership, it is merely the right to prevent the transfer for the purpose of compelling the payment of the debts of objecting creditors by suspension or some sort of discipline of the member. It is clear from the facts that any such hypothecation, and any semblance of a lien created thereby, either had been or could have been avoided by Henderson at the time of the petition in bankruptcy and adjudication, because the facts show that the utmost right that the Creditors had, if they in fact were creditors under the provisions of the rules, was to object to a transfer after the posting of the application to make a transfer. There was no such objection within the ten days, nor prior to passing of the title from Henderson to the trustee, if it did pass.

The rules show that when an application has been posted ten days, if no objection is made, it is assumed that there are no outstanding claims, and the right to transfer becomes absolute without action by the Board. There is no pretense that any right exists in either the Board or any creditor after transfer of a membership. It necessarily follows that any claim under any rule made by the Board, or by any creditor of Henderson, under the circumstances here shown, could have been defeated by Henderson after sale, and consequently action by the trustee would lie in the court of adjudication under Sections 23*b* and 70*e*.

At the time the operation of the law passed the title to the trustee, Henderson could have transferred all his rights. No creditor had any right except to object before transfer. The Board could only

*Sec. 70*e*. The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value. For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

discipline its members. When the law passed his rights to the trustee, Henderson ceased to be a member, and was of course not thereafter subject to discipline by the Board.

2. From the facts and the foregoing discussion, it needs no further discussion to show that whether there was any other juris-
92 diction or not, there existed that jurisdiction that appellants admit does exist, viz.,

"Nessessarily the District Court has in cases of this kind jurisdiction to ascertain these facts" (whether the adverse claim is real or merely colorable, etc.) "and if in a given case this question of fact is found against the trustee, the court may go no further."

The court proceeded under its jurisdiction for the purpose of ascertaining the facts, but instead of finding against the trustee it found, as it must have found from the undisputed facts, that any claim of appellants was without substance and colorable only.

3. Under the decisions of this court, and numerous decisions of the Supreme Court, such a membership is property and passes to the trustee. (Hyde v. Woods, 94 U. S. 523; Page v. Edmunds, 187 U. S. 596; Rogers v. Hennepin County, 240 U. S. 184; Anderson v. Durr, — U. S. — (opinion dated Nov. 7, 1921); Board of Trade v. Weston, 243 Fed. 332.)

4. The claim that the action of the court was an interference with the Board's right to control its internal affairs is without merit, because, while that may be true as a general proposition, yet it has several exceptions. One of them will be fully apparent by comparing Barclay v. Smith, supra, with Weaver v. Fisher, 110 Ill. 146, 152. In the latter case the court explicitly repudiates the construction placed upon the former case by apellants. Whether a rule or by-law is valid, and the proper construction thereof, are matters for the courts. While a rule or by-law by itself may be valid, yet it is possible that a set of rules or by-laws may produce such inequitable results that they may, as a whole, be illegal. For instance, in several cases where it was shown that boards of trade had rules similar to those in evidence here, and also had other by-laws expressly providing for liens and for a sale of the membership so as to save the sale value of the membership for the lienholders, the member and his creditors, the Supreme Court recognized such rules as valid. (Hyde v. Woods, 94 U. S. 525; Page v. Edmunds, 187 U. S. 596; Anderson v. Durr, — U. S. —, opinion dated Nov. 7, 1921). But in the case at bar the only power in the creditors was to obstruct a sale by objecting thereto. The only power of the Board was to destroy the sale value by suspension of a member or other disciplinary action, thereby preventing a sale. The facts show that there
93 was no substantial right to be preserved or worked out under the Board's rules. On the contrary, any action taken, without the consent of Henderson, the bankrupt,—and he could give none—would merely destroy the sale value. Such results the District Court had the power to prevent.

The complaint that this was a summary proceedings is without merit. While the proceeding is summary in form, the whole of the facts are shown in the petition and answers. Under such circumstances, the form of action is immaterial. (Re Rockford Product & Sales Co., 275 Fed. 811; Re Raphael, 192 Fed. 874).

The decree of the court below, sustaining the trustee's petition, is affirmed.

A true Copy.
Teste:

____ ____,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

94 And afterwards, on the same day, to-wit; On the thirteenth day of May, 1922, the following further proceedings were had and entered of record, to-wit:

Court met pursuant to adjournment.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. Samuel Alschuler, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Edward M. Holloway, Clerk.

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge.

3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR GRAIN COMPANY, George A. Hellman, George S. Bridge and John R. Leonard, Doing Business as Bridge & Leonard, and James E. Bennett, Frank J. Saibert, Frank F. Thompson, and Frank A. Miller, Doing Business as James E. Bennett & Company,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the petition to review and revise an order of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered therein on July 29, 1921, and the answer thereto, and was argued by counsel.

95 On consideration whereof, It is now here ordered, adjudged and decreed by this court that the said order of the said

District Court in this cause be, and the same is hereby affirmed with costs.

And afterwards, to-wit: On the second day of June, 1922, of the October Term last aforesaid, the following further proceedings were had and entered of record:

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Edward M. Holloway, Clerk.
Robert R. Levy, Marshal.

Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

96 3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy or Wilson F. Henderson.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for petitioners, it is ordered that the mandate in this cause be, and the same is hereby stayed until the further order of court—counsel for respondent present and consenting thereto.

97 & 98 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from one to twenty-four, inclusive, contain a true copy of the proceeding had and papers filed (except briefs of counsel and stipulations fixing time for filing same) in the following entitled cause: In the Matter of Wilson F. Henderson, Bankrupt; Board of Trade of the City of Chicago, et al., Petitioners, vs. E. H. Johnson, Trustee in Bankruptcy, etc., Respondent, No. 3028, October Term, 1921, as the same remains upon the files and records

of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of July, 1922.

[Seal of the United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

99 At the regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States court-room, in the city of Chicago, in said Seventh Circuit on the fifth day of October, 1920, of the October term, in the year of our Lord one thousand nine hundred and twenty-one, and of our Independence the one hundred and forty-fifth.

And afterwards, to-wit: On the twenty-fifth day of August, 1921 in the October Term last aforesaid, came the appellants, by their counsel, Mr. Henry S. Robbins, and filed in the office of the clerk of this court his appearance, which said appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1920.

No. 3034.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al., Appellants,

vs.

E. H. JOHNSON, Trustee, etc., Appellee.

The Clerk will enter my appearance as Counsel for the Appellants

HENRY S. ROBBINS,
1520-105 S. La Salle St., Chicago, Ill.

Endorsed: Filed Aug. 25, 1921. Edward M. Holloway, Clerk.

100 And afterwards, to-wit: On the twenty-seventh day of August, 1921, of the October Term aforesaid, came the appellee by his counsel, Mr. F. William Kraft and Mr. Robert N. Erskine and filed in the office of the clerk of this court their appearance which said appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1920.

No. 3034.

In re WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al., Appellants,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson, Appellee.

The Clerk will enter my appearance as Counsel for the Appellee.

F. WILLIAM KRAFT AND
ROBERT N. ERSKINE,
517-520 Harris Trust Building, Chicago, Illinois.

Endorsed: Filed Aug. 27, 1921. Edward M. Holloway, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States court-room, in the city of Chicago, in said Seventh Circuit, on the fourth day of October, 1921, of the October term, in the year of our Lord one thousand nine hundred and twenty-one, and of our Independence the one hundred and forty-sixth.

101 And afterwards, to wit: On the twenty-sixth day of January, 1922, in the October Term aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 26, 1922.

Court met pursuant to adjournment and was opened by proclamation of crier:

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Edward M. Holloway, Clerk.
Robert R. Levy, Marshal.

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge.

3034.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee, etc.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Henry S. Robbins, counsel for
102 appellants, and by Mr. Robert N. Erskine, counsel for appellee, and the court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the thirteenth day of May, 1922, in the October Term last aforesaid, there was filed in the office of the clerk of this court a certain opinion, which said opinion is not copied here, but appears in the transcript of the record in cause Number 3028 in the matter of William F. Henderson, Bankrupt, certified herewith.

And afterwards, on the same day, to-wit: On the thirteenth day of May, 1922, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Court met pursuant to adjournment.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. Samuel Alschuler, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Edward M. Holloway, Clerk.

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge.

103 3034.

In the Matter of WILSON F. HENDERSON, Brankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR GRAIN COMPANY, George A. Hellman, George S. Bridge, and John R. Leonard, Doing Business as Bridge & Leonard, and James E. Bennett, Frank J. Saibert, Frank F. Thompson, and Frank A. Miller, Doing Business as James E. Bennett & Company,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Appeal form the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby affirmed with costs.

And afterwards, to-wit: On the second day of June, 1922, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Court met pursuant to adjournment and was opened by proclamation of crier:

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Edward M. Holloway, Clerk.
Robert R. Levy, Marshal.

104 Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

3034.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for appellants, it is ordered that the mandate in this cause be, and the same is hereby stayed until the further order of court—counsel for appellee present and consenting thereto.

105 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from One to Six inclusive, contain a true copy of the proceedings had and papers filed in the following entitled cause In the Matter of Wilson F. Henderson, Bankrupt, Board of Trade of the City of Chicago, Appellants, vs. E. H. Johnson, Trustee in Bankruptcy, etc., Appellee, No. 3034, October Term, 1921, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of July 1922.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

106 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, Greeting:

Being informed that there is now pending before you a suit in which Board of Trade of the City of Chicago et al., are appellants, and E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson,

is appellee, No. 3034, and entitled In the matter of Wilson F. Henderson, Bankrupt, Board of Trade of the City of Chicago et al. vs. E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson, No. 3028, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from and petition to review and revise an order of the District Court of the United States for the Northern District of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the
107 Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

108 In the Supreme Court of the United States, October Term, 1922.

BOARD OF TRADE OF THE CITY OF CHICAGO et al., Petitioners,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson, Respondent.

Stipulation.

It is hereby stipulated by the parties to the above entitled cause that the record already on file in the Supreme Court in said cause may be taken as a return to the writ of certiorari issued from said court, and that the Clerk may send up a certified copy of this stipulation as a return to said certiorari.

HENRY S. ROBBINS,
Solicitor for Petitioners.
ROBERT N. ERSKINE,
F. WM. KRAFT,
Solicitors for Respondent.

Endorsed: Filed Oct. 30, 1922. Edward M. Holloway, Clerk.

UNITED STATES OF AMERICA,
Seventh Circuit, ss:

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full copy of which is hereto attached, I do hereby certify and return that the

transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Board of Trade of the City of Chicago, et al., appellants, vs. E. H. Johnson, Trustee, etc., appellee, is a full, true and complete transcript of the record upon which said cause was heard in the United States Circuit Court of Appeals for the Seventh Circuit, together with all proceedings in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this thirtieth day of October, A. D. 1922.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[Endorsed:] 3028, 3034. File No. 29,063. Supreme Court of the United States, No. 513, October Term, 1922. Board of Trade of the City of Chicago et al. vs. E. H. Johnson, Trustee in Bankruptcy, etc. Writ of Certiorari. Filed Oct. 30, 1922. Edward M. Holloway, Clerk.

109 [Endorsed:] File No. 29,063. Supreme Court U. S., October Term, 1922. Term No. 513. Board of Trade of the City of Chicago et al., Petitioners, vs. E. H. Johnson, Trustee in Bankruptcy, etc. Writ of Certiorari and Return. Filed Nov. 2, 1922.

No. [redacted]90

IN THE

SUPREME COURT OF THE UNITED STATES.

IN VACATION AFTER THE OCTOBER TERM, 1921.

BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR GRAIN COMPANY, GEORGE A. HELLMAN, GEORGE S. BRIDGE and JOHN R. LEONARD, partners, as Bridge & Leonard, JAMES E. BENNETT, FRANK J. SAIBERT, FRANK F. THOMPSON and FRANK A. MILLER, partners, as James E. Bennett & Co.,

Petitioners,

vs.

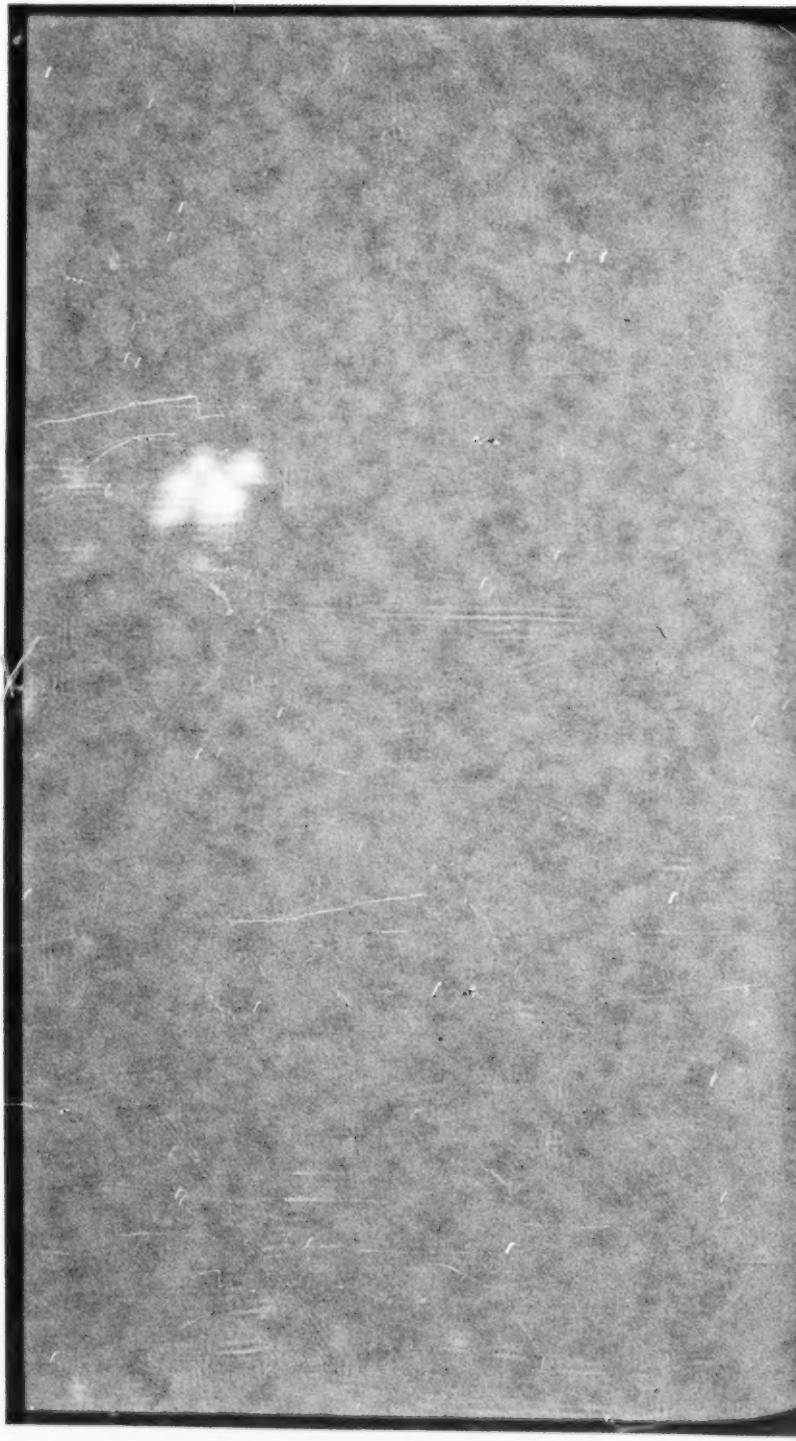
E. H. JOHNSON, trustee in bankruptcy of Wilson F. Henderson,

Respondent.

PETITION FOR CERTIORARI.

HENRY S. ROBBINS,
Counsel for Petitioners.

BARNARD & MILLER PRINT, CHICAGO.



IN THE

Supreme Court of the United States,

IN VACATION AFTER THE OCTOBER TERM, 1921.

BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR GRAIN COMPANY, GEORGE A. HELLMAN, GEORGE S. BRIDGE and JOHN R. LEONARD, partners, as Bridge & Leonard, JAMES E. BENNETT, FRANK J. SAIBERT, FRANK K. THOMPSON and FRANK A. MILLER, partners, as James E. Bennett & Co.,
Petitioners,

vs.

E. H. JOHNSON, trustee in bankruptcy of Wilson F. Henderson,
Respondent.

PETITION FOR CERTIORARI.

To the Honorable, the Judges of the Supreme Court of the United States:

The Board of Trade of the City of Chicago (hereinafter called the "Board of Trade"), and also the Armour Grain Company, George A. Hellman, and George S. Bridge and John R. Leonard, partners as Bridge & Leonard, James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, partners as James E. Bennett & Co., (hereinafter called the "co-petitioners"), respectfully represent that—

The Board of Trade maintains in Chicago a grain exchange under a special charter granted by the State of Illinois, by which it was given the right to admit or expel such persons as it may see fit in the manner to be pre-

scribed by its rules, regulations and by-laws, and also the power to maintain such rules, regulations and by-laws for the management of the business of its members, and the mode in which it should be transacted as the Board of Trade might think proper. (Rec., 17.)

Pursuant to this charter it has provided by rules (Rec., 10) that no person should be admitted to membership, unless his application shall be approved by at least ten of its eighteen directors. In lieu of the payment of an initiation fee of $25,000, an applicant may tender an unimpaired and unforfeited membership duly transferred, and must sign an agreement with said Board of Trade to abide by its rules and all amendments thereto.

The Board of Trade has also provided by rule that any member may transfer his membership provided he is not indebted to any other member, and his membership is not in any way impaired or forfeited under its disciplinary power, and *the person to whom said selling member desires to transfer his membership shall be approved for membership by its Board of Directors.* (Rec., 10.)

Another rule provides that any member convicted of a failure to comply with any business obligation to any other member shall be suspended from all the privileges of the Board, until all his outstanding debts to all members shall have been settled. (Rec., 17.)

No corporation is admitted to membership, but its rules provide that, if two of the executive officers of a corporation are members in good standing, contracts may be made by the corporation on the Exchange, but that, if such corporation shall fail to comply with its business obligations to members of the Board, such executive officers shall be subject to discipline to the same extent as upon a failure to comply with any business obligation of their own. (Rec., 11.)

In November 1899, Wilson F. Henderson was elected a member of said Board of Trade and signed with it an agreement to abide by its rules; and at that time, all of the rules above mentioned were, and still are, in full force and effect.

For many months prior to March 1, 1919, Henderson was the president of Lipsey & Company, a corporation, which under the rules was entitled to contract in its own name on the exchange. The corporation transacted business on the exchange until March 1919, when it became insolvent, being then indebted to said co-petitioners (who are, and then were, members of the Board of Trade) in sums aggregating $59,312. All of this indebtedness is still unpaid and constitutes, under said rules, outstanding unadjusted debts held by members, which—while remaining unpaid—rendered the Board of Directors incompetent to sanction the transfer of Henderson's membership, and made Henderson subject to suspension until all these debts were paid.

On the 24th of January, 1920, certain creditors of Henderson—Henderson being a resident of Chicago—filed in the District Court at Chicago a petition to have him adjudged a bankrupt (Rec., 6); and on the 24th of February, 1920, he was so adjudged, and respondent Johnson was on April 1, 1920, appointed his trustee.

Five days after this petition in bankruptcy was filed your co-petitioners being severally creditors of Lipsey & Company, filed with said Board of Trade their objections to the transfer of Henderson's membership (Rec., 12), by reason whereof its Board of Directors were debarred by the rules from sanctioning such transfer, or approving any person as a transferee of said membership, and such membership has never been transferred, and Henderson still remains a member.

After the institution of these bankruptcy proceedings, Bridge & Leonard, two of the co-petitioners and creditors of Lipsey & Company prior to the bankruptcy proceedings, instituted before the Board of Directors a proceeding, under the rule above mentioned, to have Henderson suspended from the Board of Trade by reason of the failure of Lipsey & Company to pay its said debt to Bridge & Leonard, which proceeding is still pending before said Board of Directors, by reason whereof the membership of Henderson is "impaired" within the meaning of the rule aforesaid. For this reason and because of the objections of co-petitioners to the transfer of the membership, the Board of Trade is under its rules without power to, and is unwilling to, transfer the membership of Henderson.

On the 10th of June, 1920, respondent, Johnson, filed in these bankruptcy proceedings a petition (subsequently amended) making the Board of Trade and these co-petitioners respondents, and an order was entered requiring your petitioners to show cause, why the membership of Henderson (alleged to have a value of about $10,000) should not be transferred to Johnson as trustee for the benefit of said bankrupt's estate *free and clear of any objections or claims of* said co-petitioners or of said proceedings by Bridge & Leonard to have said Henderson suspended.

In response to this order, all of your petitioners filed pleas to the jurisdiction of the District Court, which set up the facts aforesaid, and claimed that the petition presented a "controversy in bankruptcy" as distinguished from a "proceeding in bankruptcy," of which the District Court did not have jurisdiction without the consent of your petitioners, and that none of your petitioners so consented.

The District Court overruled these pleas, and peti-

tioners, not waiving their said objections to jurisdiction, filed answers, in which they again set out the facts above mentioned.

Upon a final hearing upon the petition and answers (and without introduction of any evidence) the District Court entered a decree (Rec., 38) that said membership had passed, and belonged, to said trustee *free and clear of any claims or objections of said co-petitioners,* and said Board of Trade was ordered to refuse to recognize any of said claims of your co-petitioners as valid objections to the transfer of, or liens upon, said membership as against said trustee, and to ignore the proceedings of Bridge Leonard for the suspension of said Henderson, and to enter upon the records of said Board of Trade said Johnson, Trustee, as the owner of said membership, but for the purpose of sale only.

Your petitioners then filed in the Circuit Court of Appeals for the Seventh Circuit their petition to review and revise this decree, and also duly perfected their appeal from said decree; and in that court this petition and appeal were consolidated.

On the 13th of May, 1922, the Circuit Court of Appeals affirmed the decree of the District Court. (See Opinion Rec., 91.)

Your petitioners are advised by their counsel that a writ of certiorari should issue from this court to the Circuit Court of Appeals for the following reasons:

(1) That your petitioners were "adverse claimants" within Section 23 of the Bankruptcy Act, and that the Circuit Court of Appeals erred in upholding the jurisdiction of the District Court on the ground that petitioners were not such adverse claimants; and that thereby said court failed to apply the principle established by this court in *First National Bank* v. *Chicago Title &*

Trust Co., 198 U. S. 280, and other like cases. (See accompanying brief, pp. 2-4.)

(2) That, inasmuch as this record presents the question of the jurisdiction of the District Court, this court should issue, and in similar cases (*First National Bank* v. *Chicago Title & Trust Co.*, 198 U. S. 280; *Galbraith* v. *Vallely*, 256 U. S. 46) has issued, a writ of certiorari. (See further pp. 5-8 of brief in support of this petition.)

(3) That the Circuit Court of Appeals has established as the law of the Seventh Circuit (where the same question will frequently recur) that the institution of bankruptcy proceedings against a member of an exchange at once deprives the exchange of its power to subsequently discipline him for the non-fulfillment of his business obligations to other members, or other delinquencies, even when such debts have accrued, and delinquencies have occurred, *before* the bankruptcy proceedings; and that thereby that court has failed to give effect to the decisions of this court in *Hyde* v. *Woods*, 94 U. S. 523,—where this court held that the rule giving priority to exchange creditors "entered into and became an incident of the property [a membership] when it was created, and remains a part o fit in whose hands soever it may come,"—and also in *Sparhawk* v. *Yerkes*, 142 U. S. 1,—where this court also held that a membership in an exchange is "limited and restricted by the rules of the association."

(4) That the Circuit Court of Appeals erred in holding that, upon the institution of bankruptcy proceedings or the appointment of a trustee "the operation of the law passed the title [to the membership] to the trustee," and that "Henderson ceased to be a member, and was of course not thereafter subject to discipline by the

Board," and in so holding that court ignored the decision in

Sparhawk v. *Yerkes*, 142 U. S. 1,

where this court held that the right of a trustee in bankruptcy of an exchange member was only the right to *elect*, within a reasonable time, whether to take the membership or not, thus placing the trustee, as respects a membership on an exchange, in the same position that he occupies respecting an unexpired leasehold.

(5) That the Circuit Court of Appeals erroneously construed Section 2, Rule X, of the Board (Rec., 10) as providing that, if creditor-members did not object *within ten days* after the posting of a membership for transfer, "the right to transfer becomes absolute *without action by the Board*," whereas under such rule creditor-members may object at any time before a completed transfer, and such rule expressly provides that a membership may be transferred only when the selling member produces a person "eligible to membership who *may be approved for membership by the Board of Directors.*"

(6) That, as this record presents a question of the jurisdiction of the Federal Court, and discloses a failure of the lower courts to give effect to the decisions of this court, and as these erroneous decisions, if not corrected, will become authoritative in many subsequent cases where the same questions will recur, this record presents questions of such gravity and importance, as will justify the issuance of a writ of certiorari, to the end that Federal courts may be kept within their jurisdiction, and litigants in those courts may have the benefit of the decisions of this court.

Petitioners present herewith and make a part of this petition a certified transcript of the records of said consolidated case in said Circuit Court of Appeals.

WHEREFORE, YOUR PETITIONERS PRAY That this court issue a writ of certiorari to the United States Circuit Court

of Appeals for the Seventh Circuit, requiring it to certify said cause to this court.

BOARD OF TRADE OF THE CITY OF CHICAGO,
ARMOUR GRAIN COMPANY,
GEORGE A. HELLMAN,
GEORGE S. BRIDGE,
JOHN R. LEONARD,
JAMES E. BENNETT,
FRANK J. SAIBERT,
FRANK F. THOMPSON,
FRANK A. MILLER,

By HENRY S. ROBBINS,
Solicitor for Petitioners.

HENRY S. ROBBINS,
Counsel for Petitioners.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

WALTER S. BLOWNEY, being first duly sworn, on oath deposes and says that he is Assistant Secretary of the Board of Trade of the City of Chicago, one of the petitioners in the above petition; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

WALTER S. BLOWNEY.

Subscribed and sworn to before me, this 27th day of July, 1922.

(Seal)

A. S. PAPENGUTH,
Notary Public.

No. 90.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1923.

BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR GRAIN COMPANY, GEORGE A. HELLMAN, et al.,
Petitioners,
vs.
E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson,
Respondent.

Certiorari to the Circuit Court of Appeals of the Seventh Circuit.

BRIEF FOR PETITIONERS.

HENRY S. ROBBINS,
Counsel for Petitioners.

BARNARD & MILLER PRINT, CHICAGO.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1923.

No. 90

BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR GRAIN COMPANY, GEORGE A. HELLMAN, et al.,
Petitioners,
vs.
E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson,
Respondent.

Certiorari to the Circuit Court of Appeals of the Seventh Circuit.

BRIEF FOR PETITIONERS.

QUESTIONS PRESENTED.

This record presents two questions:

(1) Of jurisdiction—does this record disclose a "proceeding in bankruptcy" or a plenary suit, of which the District Court had no jurisdiction, "unless by consent of the proposed defendant."

(2) Does the Bankruptcy Law annul the rules of the Chicago Board of Trade so far as they provide for the suspension of a bankrupt member—and prevent a sale of the bankrupt's membership—until his debts to other members are paid.

STATEMENT.

On the 10th of June, 1920, respondent, as the trustee in bankruptcy of Wilson F. Henderson a member of the Chicago Board of Trade, filed in this bankruptcy pro-

ceeding, a petition to have Henderson's membersh transferred to such trustee free and clear of any clai of this exchange or its members.

The respondents to this petition are the Board Trade of the City of Chicago (hereinafter called "Board of Trade"), and also Armour Grain Compa George A. Hellman, and George S. Bridge and John Leonard, partners as Bridge & Leonard, James E. B nett, Frank J. Saibert, Frank F. Thompson and Fra A. Miller, partners as James E. Bennett & Co., (all whom enjoy the privileges of membership in the Boa of Trade) hereinafter called the "co-petitioners."

These respondents (petitioners here), filed pleas to jurisdiction of the District Court claiming that the pe tion presented a "controversy in bankruptcy," as d tinguished from a "proceeding in bankruptcy." The pleas (in conjunction with the petition) averred the f lowing facts:

The Board of Trade maintains in Chicago a grain change under a special charter granted by the State Illinois, by which it was given the right to admit or pel "such persons as it may see fit in the manner to prescribed by its rules, regulations and by-laws," a also the power to maintain such rules, regulations a by-laws for the management of the business of its me bers, "and the mode in which it shall be transacted" the Board of Trade might think proper. (Rec., 14.)

Pursuant to this charter it has provided by ru (Rec., 9) that no person shall be admitted to memb ship unless his application shall have been approved at least ten of its eighteen directors. In lieu of the p ment of an initiation fee of $25,000, an applicant m tender an unimpaired and unforfeited membership d transferred, and he must also sign an agreement with

Board of Trade to abide by its rules and all amendments thereto.

The Board of Trade has also provided by rule that any member may transfer his membership, provided he is not indebted to any other member and his membership is not in any way impaired or forfeited under its disciplinary power, and provided the person to whom said selling member desires to transfer his membership shall be approved for membership by its board of directors. (Rec., 9.)

Another rule provides that any member convicted of a failure to comply with *any* business obligation to any other member shall be suspended from all the privileges of the Board, until all his outstanding debts to *all* members shall have been settled. (Rec., 15.)

No corporation is admitted to membership, but the rules provide that, if two of the executive officers of a corporation are members in good standing, contracts may be made by the corporation on the exchange, but that, if such corporation shall fail to comply with its business obligations to members of the Board, all its officers, who are members of the Board, shall be subject to discipline to the same extent as upon a failure to comply with any business obligation of their own. (Rec., 10.)

In November, 1899, Wilson F. Henderson was elected a member and signed an agreement to abide by its rules; and at that time, all of the rules above mentioned were, and still are, in full force and effect.

For many months prior to March 1, 1919, Henderson was the president of Lipsey & Company, a corporation, which under the above rule was entitled to make contracts in its own name on the exchange. This corporation transacted business on the exchange until March, 1919, when it became insolvent, being then indebted to

said co-petitioners (who are, and then were, members of the Board of Trade) in sums aggregating $59,312. (Rec., 17.) All of this indebtedness is still unpaid and prevented under Rule X (Rec., 9) the transfer of Henderson's membership, and made Henderson under Section 7 of Rule IV (Rec., 15) subject to suspension until all these debts were paid.

On the 24th of January, 1920, and after Lipsey & Co. had become indebted as aforesaid, certain creditors of Henderson—who was a resident of Chicago—filed in the District Court at Chicago a petition to have him adjudged a bankrupt (Rec., 6); and on the 24th of February, 1920, he was so adjudged, and respondent Johnson was on April 1, 1920, appointed his trustee.

Five days after this petition in bankruptcy was filed the co-petitioners, being severally creditors of Lipsey & Company, filed with the Board of Trade their objections to the transfer of Henderson's membership (Rec., 21), by reason whereof its board of directors are debarred by the rules from sanctioning such transfer, or approving any person as a transferee of said membership, such membership has not been transferred, and Henderson still remains a member.

After the institution of these bankruptcy proceedings, Bridge & Leonard, two of the co-petitioners (and creditors of Lipsey & Company prior to the bankruptcy proceedings), instituted before the board of directors a proceeding, under the rule above mentioned, to have Henderson suspended from the Board of Trade by reason of the failure of Lipsey & Company to pay its said debt to Bridge & Leonard. This proceeding is still pending before the board of directors, by reason whereof the membership of Henderson is "impaired" within the meaning of Rule X. For this reason and because of the objections of co-petitioners to the transfer of the membership,

the pleas alleged that the Board of Trade is under its rules without power, and is unwilling, to transfer the membership of Henderson.

The District Court overruled these pleas; and petitioners, not waiving their objections to jurisdiction filed answers, in which they agai nset out the facts above mentioned. (Rec., 25, 30.)

Upon a final hearing upon the petition and answers (and without the introduction of any evidence) the District Court entered a decree (Rec., 31), that said membership had passed, and belonged, to said trustee *free and clear of any claims or objections of said co-petitioners*, and ordering said Board of Trade to refuse to recognize any of said claims as valid objections to the transfer of, or liens upon, said membership as against said trustee, and to ignore the proceedings of Bridge & Leonard for the suspension of said Henderson, and to enter upon the records of said Board of Trade said respondent, as the owner of said membership, but for the purpose of sale only.

Petitioners then filed in the Circuit Court of Appeals their petition to review and revise this decree, and also perfected their appeal from said decree; and in that court this petition and appeal were consolidated.

On the 13th of May, 1922, the Circuit Court of Appeals affirmed the decree of the District Court, (see opinion, Rec., 68) and this case is here on certiorari.

The Errors Relied Upon.

1. That the District Court erred in not dismissing the petition for want of jurisdiction.

2. That the District Court erred in not dismissing the petition for want of merit.

ARGUMENT.

I.

QUESTIONS OF JURISDICTION.

The opinion of the Circuit Court of Appeals says that "the record and undenied statements in open court show that at the time the bankruptcy proceedings were commenced * * * Henderson was a citizen of the State of Florida."

There is nothing in the record to support this statement. On the contrary, the verified creditors' petition to have Henderson adjudged a bankrupt (Rec., 6) expressly states that Henderson was a resident of Chicago, and if he had been a resident of Florida, the District Court for the Illinois district would have been without jurisdiction to adjudge him a bankrupt, and it would have been the duty of the Circuit Court of Appeals of its own motion to have directed the dismissal, not only of the petition involved in this record, but the entire bankruptcy proceeding. Furthermore, that court was not warranted in accepting, in lieu of the plain statements of the record, "undenied statements made in open court" by respondent's counsel.

Jurisdiction in the District Court, therefore, could not be sustained within the exception in Section 23-b of the Bankruptcy Act, which permits suits by the trustee in the courts where the bankrupt might have brought them, had proceedings in bankruptcy not intervened.

The Circuit Court of Appeals did not itself rely upon this basis for jurisdiction; for it proceeded to uphold the

jurisdiction of the District Court upon the ground that neither the Board of Trade nor its co-petitioners here were "adverse claimants" within the jurisdictional provisions of the Bankruptcy Act.

In disposing of this question of jurisdiction, the question is not, whether the claimants are on the right or wrong side of the controversy, but only whether there is a real controversy. The Circuit Court of Appeals seems to have ignored this and to have overruled the plea because the court was against the petitioners on the merits.

Under any bankruptcy law, there is a natural and proper distinction to be drawn between the *proceeding in bankruptcy* "initiated by the petition and ending in the distribution of the assets among the creditors and the discharge, or refusal of a discharge, of the bankrupt," and a *suit to determine a controversy* between a trustee in bankruptcy and a claimant of an adverse interest.

This distinction arises out of the necessity for a reasonably expeditious administration of a bankrupt's estate, which is not possible, if the parties to all controversies arising out of bankruptcy proceedings enjoy all the rights to litigate, which are accorded to ordinary litigants.

Thus, a bankruptcy court must, so far as feasible, be given the right to decide questions in a summary way—by a summary petition and notice—instead of by bill in equity or action at law. So, too, the right to have a case reviewed by appeal must necessarily be much abridged.

They who benefit from the bankruptcy law—the individual bankrupt and his creditors—may reasonably be deprived of the full right to litigate. For they are interested in, and compensated by, the speedier administration of the bankrupt's estate.

But there can be no reason, why a *stranger* to the bankruptcy proceedings—one who does not claim or benefit under it—should have his right to litigate curtailed. It is doubtless these considerations that have given rise to the distinction above mentioned.

The bankruptcy law of 1867 observed this distinction. The District Courts were given jurisdiction to proceed in a summary way in the disposal of all those controversies that arose out of the administration of the estate —mainly questions which concerned only the bankrupt and his creditors.

In this class of cases, the Circuit Courts were given by the laws of 1867, jurisdiction to exercise a general supervision over the District Courts, but no appeal from the Circuit Courts to the Supreme Court was given.

That statute also gave both the Circuit and District Courts jurisdiction of suits brought by an assignee in bankruptcy "against any person claiming an adverse interest," as well as of suits by such claimant against such assignee, and in this class of cases the same right of appeal was accorded as existed in other cases.

In other words, where only those benefiting by the bankruptcy law were interested—the proceeding was summary and the appeal limited; and where the rights of adverse claimants who were strangers to the bankruptcy proceedings were involved—the controversy took the form of a suit at law or in equity, and a full right of appeal was given.

Smith v. *Mason*, 14 Wall, 419.
Marshall v. *Knox*, 16 Wall 551.

The same distinction was carried into the present bankruptcy law.

First National Bank v. *Title and Trust Company*, 198 U. S. 280-9.

Sub-clause (7) of Section 2 confers on the District Courts jurisdiction at law and in equity to "cause the estates of bankrupts to be collected * * * and to determine controversies in relation thereto, except as *herein otherwise provided.*" And this exception refers to sub-clause "b" of Section 23, reading as follows:

> "Suits *by* the trustee shall only be brought * * * in the courts where the bankrupt * * * might have brought * * * them if proceedings in bankruptcy had not been instituted unless by consent of the proposed defendant."

The present law draws a distinction between "controversies at law and in equity" and "proceedings in bankruptcy," and District Courts are given full jurisdiction as courts of bankruptcy of all controversies which concern the administration of the estate and affect only those benefiting by the bankruptcy law—bankrupts and their creditors—and this jurisdiction is exercised in a summary proceeding and without trial by jury. The only right to review in such cases is by petition in Circuit Courts of Appeals and this *is limited to questions of law.*

The language used in the 1867 law was "suits at law or in equity" brought by the assignee in bankruptcy "against any person claiming an adverse interest," or "by such claimant against such trustee;" while sub-clause "b," Section 23 of the present bankruptcy law reads, "suits *by* a trustee shall only be brought," etc. But the preceding sub-clause "a" of Section 23 refers to "controversies at law and in equity" * * * between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees."

Thus the words "suits by the trustee" in Section "b," should be construed as meaning suits by the trustee against a *person claiming an adverse interest,* and in this

respect the provision of the 1867 Act and the present la must be regarded as identical.

Under the general principle that gives to a court juri diction of all controversies respecting property with its possession and control, the bankruptcy courts ha also jurisdiction of plenary suits which any adver claimant finds it necessary to bring against a trustee as well as of all such suits as a trustee finds it necess to institute against adverse claimants—*relating to t property of the bankrupt within the control of the cou or its officers.*

If, therefore, the proceeding at bar is, within the di tinction above indicated, a "controversy in bankruptcy and the trustee had not acquired possession or contr of the membership, the District Court was without juri diction to decide the controversy, and did not acqui jurisdiction because such respondents subsequently a swered to the merits.

First Natl. Bank v. *Title & Trust Co.*, 198 U. 280.

Bardes v. *Hawarden Bank*, 178 U. S. 524.

These decisions conform to sub-clause "a" of Secti 23 of the present law, which prevents plenary suits f "controversies, * * * between trustees as such and a verse claimants concerning the property acquired claimed by the trustees." This membership is such pro erty.

Thus jurisdiction here depends on (1) whether th proceeding by the trustee is a "controversy in ban ruptcy," and if so, (2) whether the District Court throu the trustee had acquired possession of this membersh

First. The Circuit Court of Appeals decided th neither the Board of Trade nor the co-petitioners (all whom are strangers to the bankruptcy proceeding) a

to be regarded as adverse claimants, although they claim, as does the trustee, what this court has decided to be property subject to taxation. *Anderson* v. *Durr*, 257 U. S.99.)

To reach this result that court confines adverse claimants to those "who (1) have possession of the property, claiming ownership thereof or a lien thereon, or (2) who deny owing any money claimed by the trustee."

There is no valid reason, and no authority, for thus limiting the character of adverse claimants, or thereby excluding petitioners from that category.

The decision of this question of jurisdiction cannot be made to depend upon the particular kind of right asserted. In no branch of the law protecting property is there a distinction made between rights to tangible property and choses in action or other rights which are intangible.

No reason exists for holding to be an adverse claimant one, who happens to be the owner of property susceptible of possession, or one indebted to the bankrupt on a money demand, and denying the same character to one who has or asserts a right which relates—as here—to intangible property.

An adverse claimant is anyone who claims adversely to another some right which the law recognizes and will protect. Where—as here—a trustee seeks to defeat a contract between a bankrupt and a stranger to the bankruptcy proceedings, or where the trustee is attempting to defeat a right under a charter from a state claimed by such stranger to the bankruptcy proceeding, the latter is an adverse claimant, especially where the right claimed relates to or affects what this court has held to be valuable property.

The decisions sustain this construction of the Bank-

ruptcy Act. Thus while one who holds property as agent or officer of the bankrupt and makes no personal claim upon it, or a receiver or an assignee for the general benefit of creditors (when he is claiming nothing for himself), is not an adverse claimant.

Mueller v. *Nugent*, 184 U. S. 1.
Babbitt v. *Dutcher*, 216 U. S. 102.
Bryan v. *Bernheimer*, 181 U. S. 188.

Such an assignee is an adverse claimant when there is a controversy respecting his fees or expenses.

Galbraith v. *Vallely*, 256 U. S. 46.
Louisville Trust Company v. *Comingor*, 184 U. S. 18.

The cases make no distinction in the nature of the adverse claim. A real claim of any right which the law recognizes and will enforce makes one an adverse claimant.

The claim need not be to tangible property nor to property within the claimant's control or possession. One who claims a debt due from a third person, which debt is also claimed by the trustee, is an adverse claimant.

Smith v. *Mason*, 14 Wallace 419.

A creditor who has levied on property of his debtor (subsequently a bankrupt) and caused a receiver to be appointed by a state court before the bankruptcy proceedings, is an adverse claimant.

Martin v. *Oliver*, 260 Fed. 89.

Where one bank claims a lien on securities held in the possession of another bank to secure a debt of one subsequently becoming a bankrupt, the former bank is an adverse claimant.

In re Bacon, 210 Fed. 129 (C. C. A., 2d. Cir.).

Where a contractor, who subsequently became bankrupt had a contract with the city, and one furnishing material to the contractor had by statutory notice secured a lien on the money due the contractor from the city, such materialman was an adverse claimant within the bankruptcy law.

In re Cotton, 209 Fed. 124.

Where an assignment is made, not for the benefit of creditors generally, but to secure certain creditors, they are adverse claimants under the bankruptcy law.

In re McCrum, 214 Fed. 207 (C. C. A., 2d Cir.).

A creditor who claims under a lien any of the property of a bankrupt in the hands of a sheriff or other person, is an adverse claimant.

Marshall v. *Knox*, 16 Wall. 551.

First Nat. Bank v. *Title & Trust Co.*, 198 U. S. 280.

In the latter case, the Supreme Court again asserted that the principle requiring a plenary suit is applicable "whether absolute title or only a lien is claimed."

See also *In re Rathman*, 183 Fed. 913 (C. C. A., 8th Cir.).

Within the principle as thus properly defined, the Board of Trade is an adverse claimant. Under its charter it has the right to provide that no corporation should transact business on its exchange unless the officers of that corporation are subject to the same liability for the debts of the corporation to other members as for their own debts to other members.

It also has the right to provide for the suspension of a member—or to refuse to transfer his membership—until all his debts to other members are paid. This is but a part of its disciplinary power over its members.

The Illinois courts have many times upheld, and many times refused to interfere with, the exercising of this disciplinary power. It also has the right to provide that no one shall become a member unless he agrees to these provisions.

Henderson the bankrupt, to become a member of the Board, agreed to abide by these rules. Thus, his membership is based upon a contract, whose provisions are as binding upon the trustee as upon the bankrupt.

Henderson, as the principal officer of a corporation, transacted business on the Board of Trade in its name. The corporation thus became indebted to sundry other members of the Board of Trade in sums aggregating over $65,000.

This has resulted in a controversy between the Board of Trade, a stranger to the bankruptcy proceeding on the one side, and the trustee in bankruptcy on the other. The Board of Trade asserts, and the trustee denies, the continuance of its disciplinary power *after* the institution of bankruptcy proceedings. The trustee claims, and the lower court held, that as soon as bankruptcy proceedings are instituted against a member all the rules of the Board of Trade become inactive, so far as they affect the value of the membership of the bankrupt; that Henderson's membership is an asset in bankruptcy, the proceeds of which should be applied to the general creditors of the estate. The Board of Trade denies these claims and contends that the bankrupt is still subject to suspension for the failure of his corporation to pay its debts, and that these debts are, under the rules of the Board of Trade obstacles to the transfer of the membership, and that the trustee is seeking to annul, and the District Court has annulled, the contract under which this bankrupt became a member.

In other words, the Board of Trade is claiming under a legal right arising out of a charter granted by the State of Illinois and a contract with Henderson, and the trustee is denying that right, and claims that it is eliminated by, or subordinated to, the Bankruptcy Law.

On what theory can it be claimed that this does not present a controversy, and a substantial and bona fide controversy, between the trustee and a stranger to the bankruptcy proceeding who is an adverse claimant within the meaning of the Bankruptcy Act?

But the Board of Trade is not the only claimant. The trustee also made defendants to his petition the co-petitioners (members of the Board of Trade) who have unpaid claims against Lipsey & Company, Henderson's corporation, and the petition prayed for, and the District Court granted, relief against these claimants.

All of them claim that, under the rules of the Board of Trade, Henderson's membership could not be transferred until their claims against Lipsey & Company were paid or satisfactorily settled. Co-petitioners Bridge & Leonard also claim the right to have the Board of Trade suspend Henderson until Lipsey & Company's debt to them was paid.

The debts of Lipsey & Company were valid liens upon the membership for sums which in the aggregate far exceed its value ($10,000). For a lien often arises out of a mere right to *withhold* property from the owner until he pays a debt. Certain common law liens do not include a power of sale. (25 Cyc., 662, 680, 19 Halsbury's Laws of England 25.) The rules of the Board of Trade enabled these co-petitioners to prevent Henderson and his assigns from realizing by a sale of the membership without first paying or settling co-petitioners' claims. Hence, these petitioners who have

claims against Lipsey & Company are claiming rights in the nature of liens on the membership of the bankrupt to secure amounts far in excess of the value of the membership, and are adverse claimants. In other words this case in this respect is not to be distinguished from—

Marshall v. *Knox*, 16 Wallace 551.

First National Bank v. *Title & Trust Co.*, 198 U. S. 280.

In re McCrum, 214 Fed. 207, 211 (C. C. A., 2d Cir.).

In the First National Bank case a storage company claimed certain property as against the trustee in bankruptcy, because it had issued therefor certain warehouse receipts. Here the Board of Trade asserts the right to withhold the transfer of the membership to the trustee because of certain of its rules and its implied contracts with its members. In the First National Bank case the holders of the warehouse receipts claimed liens upon the property. In the case at bar co-petitioners claim liens upon the membership. In both cases the claims of the corporations, as well as the claims of those asserting liens, were *bona fide* and substantial. In the First National Bank case this court decided that the Circuit Court of Appeals had erred upon the question of jurisdiction.

Second—Is the trustee or the District Court in possession or control of this membership?

It is represented by no certificate or other document.

It is not susceptible of sale in the sense that other property is. Money can be realized from a transfer only because one accepted as a member of the Board of Trade may tender an existing membership in lieu of the initiation fee of $25,000. This requires that the board of directors must accept as a member the person who thus tenders the membership and sanction the transfer

of the membership tendered. Before doing so, the Board must post the membership for transfer and thus determine whether it is in a condition to be transferred. If the Board refuses to sanction the transfer or to accept the membership tendered in lieu of an initiation fee, the only way in which it can be compelled to do so is by judgment of a court behind which is the authority of the state or nation. How can something that the trustee is powerless to transfer or sell without either the concurrence of the Board of Trade or, in its absence, the judgment of a court be said to be in the possession or control of such trustee or the District Court?

If the Board were merely passive and indifferent because having no interest or right of its own to protect, and were willing to make a transfer whenever requested by the trustee and the bankrupt, it might perhaps be said that the Board occupied a position similar to that of an agent, or receiver, or assignee for the benefit of creditors, and therefore was not one in possession adverse to the trustee.

But here the Board has a distinct and personal interest under the contract by which the bankrupt became a member. It is claiming adversely to the trustee and refuses to take any of the steps by which alone the membership can be transferred. It is in complete control of the membership and cannot be divested of that control except by judicial order.

Indeed, it is difficult to see how possession can be predicated upon a mere chose in action or other intangible right.

The trustee perhaps may be said to be in constructive possession of a chose in action when the other party thereto recognizes the trustee's right and holds for his benefit.

But how can this be when such party denies any right of the trustee and refuses to hold for his benefit, or to accept any orders from him for the payment, delivery or transfer of the chose in action?

Moreover, the rule under consideration does not include constructive possession at all. If it did, a trustee could sue any debtor of the bankrupt in the District Court on the ground that the court was in constructive possession of the debt, which would nullify the explicit provision of the statute that the trustee may not sue an adverse claimant in the District Court without the latter's consent. As stated by the Circuit Court of Appeals of the Eighth Circuit in *Re Rathman*, 183 Fed. 913-926, "the actual possession by the bankruptcy court is the indispensable condition of its exclusive and of its summary jurisdiction here."

The Circuit Court of Appeals, therefore, properly ignored the contention of counsel for respondent—which will be renewed in this court—that the membership passed into the *constructive* possession of the trustee by reason of the adjudication in bankruptcy.

In *O'Dell* v. *Boyden*, 150 Fed. 731, which counsel cite in support of this contention, a member of the New York Stock Exchange became a bankrupt and under the order of the bankruptcy court requested the Exchange to sell his membership; and the Exchange sanctioned the transfer of the membership to one whom the Exchange accepted as a member, and the proceeds of such sale were held by officials of the Exchange awaiting distribution pursuant to its rules, which gave priority in such distribution to its own members. The Exchange itself made no claim to any of the money. The right of creditor members to priority of distribution was conceded. The controversy related only to the residue of the proceeds

after the payments to the Exchange members. After the sale a claimant appeared for this residue, and the only controversy was between the trustee and this claimant. Neither the Exchange nor its creditor members were in any sense adverse claimants. Before the appearance of this claimant the Exchange had, in fact, accepted the position of agent or bailee for the trustee, and thus under *Bryan* v. *Bernheimer*, 181 U. S. 188, the Exchange was in no sense an adverse claimant. The validity of its rules was not questioned, and its position was entirely different from that of the Board of Trade in the case at bar.

We, therefore, insist that these petitioners were adverse claimants of an interest in this exchange membership, that the controversy respecting it constituted a plenary suit; that the District Court had in no way acquired actual possession of the membership; that, respondents below not consenting, the District Court was without jurisdiction, and that this court should direct the dismissal for want of jurisdiction in the District Court.

II.

THE MERITS.

The Circuit Court of Appeals erred on the merits in the following respects:

(1) In holding that the right of the Board of Trade under its rules to suspend a member—and to refuse to transfer his membership—until his debts to other members were paid, ceased upon the appointment of a trustee in bankruptcy—even as respects debts which had accrued *before* the bankruptcy proceedings.

(2) In holding that this membership was an asset in bankruptcy.

(3) In construing the rule of the Board of Trade to mean that when an application for transfer of a membership had been posted and no objection was filed *within ten days* "the right to transfer became absolute without action by the board."

First. One reason given by the Circuit Court of Appeals for holding the first of the above propositions is, that upon being adjudged a bankrupt "Henderson ceased to be a member and was, of course, not thereafter subject to discipline by the Board," all his rights having passed to the trustee. In other words, upon an adjudication in bankruptcy title to the membership *ipso facto* passed to the trustee. This is in conflict with

Sparhawk v. *Yerkes*, 142 U. S. 1,

where this court held that the right of a trustee in bankruptcy of an exchange member, whose membership was incumbered by a rule of the exchange providing for his suspension until his debts to other members were paid—was only the right to *elect* within a reasonable time whether to take the membership or not, and that if such trustee should elect not to take, the membership remains the property of the bankrupt—thus placing the trustee, as respects a membership on an exchange, in the same position that he occupies respecting an unexpired leasehold.

This theory that the trustee has only the power to elect, at least where the membership is encumbered, is plainly the proper and practical one; for it permits the member to continue to earn his living after bankruptcy by acting as a broker or agent in exchange transactions, until and unless the bankruptcy court, to avoid incumbering the membership with new debts to other members, shall enjoin him from further trading.

If the membership is already incumbered by debts to

members beyond its value, so that the trustee should elect not to take it and pay the dues upon it, the bankrupt member may continue to earn a living upon the exchange so long as his exchange creditors indulge him, and this they frequently will do as the best way to enable him to ultimately pay or compromise his debts to them, and thereby become again a member in good standing as was the case in *Sparhawk* v. *Yerkes*.

Another reason given by the Circuit Court of Appeals for this first proposition is that such action by the Board of Trade under its rules, after the institution of bankruptcy proceedings "would merely destroy the sale value" of the membership which "the District Court had the power to prevent."

This is but another way of saying that the trustee takes the membership free from conditions which clog it as respects the member—a proposition which is at variance with several decisions of this court, which recognize and uphold the restrictions upon a membership which the rules of the exchange impose.

Hyde v. *Woods*, 94 U. S. 525,

where this court, in upholding a rule giving priority to exchange creditors, said:

> "A seat in this board is not a matter of absolute purchase. Though we have said it is property, it is incumbered with conditions when purchased, without which it could not be obtained. It never was free from the conditions of Article 15, neither when Fenn bought, nor at any time before or since. That rule entered into and became an incident of the property when it was created, and remains a part of it into whose hands soever it may come." And

Sparhawk v. *Yerkes*, 142 U. S. 1,

where this court again held a seat in a stock exchange to be "property, not absolute and unqualified, but limited and restricted by the rules of the association."

Page v. *Edmonds*, 187 U. S. 601.

The Circuit Court of Appeals decides that, as soon as bankruptcy proceedings are instituted against a member, the exchange at once loses all its disciplinary power over that member, and can neither expel him for misconduct, nor suspend him, or refuse to transfer his membership—because of his failure to pay his business obligations. That decision is not only in direct conflict with the decisions of this court in the above cases, but it is an impairment of the contract, which Henderson made in order to become a member.

No exchange can properly function unless all its members are at all times subject to its rules, including those giving the exchange the right to suspend or expel, whenever its rules contemplate such action.

The rules of the Board of Trade expressly authorize Bridge & Leonard to have Henderson suspended until all the debts of his corporation to other members of the Board were paid, and Henderson, to become a member, agreed that these rules might be made operative against him. Did the institution of bankruptcy proceedings absolve him and his trustee from this contract obligation?

In the *Sparhawk* case as well as in *Page* v. *Edmonds*, this court has upheld, as against a trustee in bankruptcy, exchange rules which automatically suspend an insolvent member, and provide that his debts to other members should be first paid, when the membership is sold; and no distinction is apparent between such a rule and one which, like the one at bar, makes such suspension discretionary with the board of directors of the exchange.

As there is nothing in the rule of the Board of Trade fixing a time limit, within which such charge shall be preferred or the suspension ordered—the rule being applicable to "any member,"—one is subject to suspension under this rule so long as he remains a member. If

a proceeding to suspend is commenced before the board of directors has sanctioned a sale of the membership, the membership becomes impaired under Rule X, hereafter mentioned, and the board of directors may not sanction the sale until the proceeding to suspend is disposed of, and, if the member is suspended, until he has adjusted his debts to other members.

What is here said respecting the rule providing for the suspension of a member is equally applicable to the rule preventing the transfer of a membership, when the member has any "outstanding unadjusted or unsettled claims or contracts held by members of this association."

The claims of the co-petitioners against Lipsey & Company were by the rule made such unadjusted claims against Henderson, and so long as they were unpaid the board of directors had no power under the rule to transfer the membership. Henderson had agreed to this, and he certainly is in no position to annul this contract by compelling the transfer of his membership without the payment of these obligations. On what theory can his trustee do so?

No citation of authority seems necessary upon the well settled principle that as respects equities and contracts the trustee stands in the shoes of the bankrupt, and may not sue or defend upon any ground not available to the bankrupt.

Second. Is this membership an asset in bankruptcy, as held by the Circuit Court of Appeals?

Section 70 of the Bankruptcy Law vests in the trustee all the property "which prior to the filing of the petition he could by any means have transferred, or which might have been levied upon and sold under judicial process against him."

This membership could not have been levied upon and sold under judicial process against Henderson.

Barclay v. *Smith*, 107 Ill. 349.

Nor could it have been sold *by Henderson* prior to the filing of the petition in bankruptcy, because there were members of the Board having claims amounting to many times the value of the membership, who, under the rules were entitled to, and did, object to the transfer; and without the consent of *all* of them the board of directors is powerless to permit the transfer of the membership. Henderson could only make the membership transferable by satisfying these creditors, and the trustee—who stands in the bankrupt's shoes—cannot render it transferable, because the District Court would not permit him to expend enough money of the estate to satisfy these creditor-members.

It would, therefore, seem plain that under the wording of the Bankruptcy Law, a membership is not an asset in bankruptcy *when it is encumbered with the claims of creditor-members which exceed the saleable value of the membership.* And this for the reason that prior to the filing of a petition a member could not "in any sense have transferred" his membership. In the present case Henderson was not, when the petition was filed, in a position to transfer this membership and the Board of Trade was not then, and is not now, under its rules in a position to sanction such transfer.

When the rules of the Board are given their proper legal effect, the membership is valueless to the trustee in bankruptcy, because no order that the court can make respecting the sale of the membership could add one dollar to the bankrupt's estate. At best, the question respecting the title to the membership is as respects the trustee a mere academic one. In this view, too, the decree appealed from should be reversed.

An authority for this is,

In re Gregory, 174 Fed. 629 (C. C. A., 2d Cir.).

Again this case differs from those already cited, in which this court has held a membership on the exchange to be an asset in bankruptcy.

The State of Illinois, for the purpose of enlarging its intrastate commerce, has created and granted a special charter to the Board of Trade and thereby conferred on it the right to fix the conditions of membership. These so fixed are such that the Supreme Court of Illinois has likened a membership in the Board of Trade to a membership in a church, Masonic or Odd Fellow lodge, and for this reason has held it free from the claims of creditors.

People v. *Board of Trade*, 80 Ill. 134.

Under its charter power the Board of Trade has adopted rules under which neither the Board, nor members who are creditors of an insolvent member, may force the sale of his membership to pay his debts. Nor can an outside creditor of an insolvent member by legal process cause the sale of a membership. Those rules also provide that neither the member may sell nor the Board of Trade sanction the sale of, the membership, if a single other member, who is a creditor, objects.

In other words, a membership on the Board of Trade may be sold only when every creditor who is a member of the Board consents thereto. This is a part of the contract of membership, which is equally binding on the Board of Trade, the member and his trustee in bankruptcy.

These features are not present in the cases, in which this court has held (see cases already cited) that a membership in an exchange is an asset in bankruptcy. In each of the decisions of this court the rules of the ex-

change provided for the compulsory sale of a membership of an insolvent member and the application of the proceeds to the payment of creditors, who were members of the exchange. No such creditor could object to the transfer or the sale of the membership. Nor could the insolvent member.

In those cases a forced sale of the membership did not violate any rule of the exchange. The bankrupt could sell his membership despite any objection of the other members, and the exchange, as well as the bankruptcy court was in a position to compel him to do so. It was property, which the bankrupt prior to the filing of the petition in bankruptcy could have transferred.

This distinction in the elements constituting a membership in the Board of Trade and those constituting a membership of the exchanges involved in the previous decisions of this court justifies the contention that, despite those decisions, a membership in this Board of Trade is not an asset in bankruptcy, even if it were not encumbered with the debts of other members. *It is not, however, our purpose to present this question at this time, as the membership in the case at bar is encumbered beyond its value, and this seems amply sufficient to justify a reversal.*

Third. The Circuit Court of Appeals misconstrued the rule of the Board of Trade in holding that, when an application for transfer had been passed and no objection had been filed *within ten days,* "the right to transfer became absolute without action by the Board."

Rule X (Rec., 10) provides (Section 1) that one may become a member only after ten days' notice of such application has been posted on the bulletin of the exchange, and upon the approval of at least ten of the eighteen directors, and that

"Every member shall be entitled to transfer his membership when he * * * has against him no outstanding * * * claims or contracts held by members of this Association, and said membership is not in any way impaired or forfeited * * * *to any person eligible to membership who may be approved for membership by the Board of Directors,* after due notice by posting, as provided in Section 1 of this rule. * * * Prior to the transfer of any membership, application for such transfer shall be posted upon the bulletin of the exchange for *at least* ten days, when, if no objection is made, it shall be assumed the member has no outstanding claims against him."

Thus as a prerequisite to the transfer of a membership, a member desiring to transfer his membership must produce a person willing to purchase, and the name of such person must be posted on the bulletin board of the exchange for ten days, and thereafter such applicant must be approved for membership by the board of directors. The board of directors may not, under this rule, approve the transfer, if the membership is impaired by the pendency of, or suspension in, disciplinary proceedings.

Thus what operates to transfer the membership is the action of the board of directors in accepting the new member.

The Circuit Court of Appeals, therefore, misconstrued the rule in holding, as it did, that by reason of the failure of creditors to object within ten days "the right to transfer becomes absolute without action by the board," and that thereafter the selling member ceases to be a member or subject to discipline.

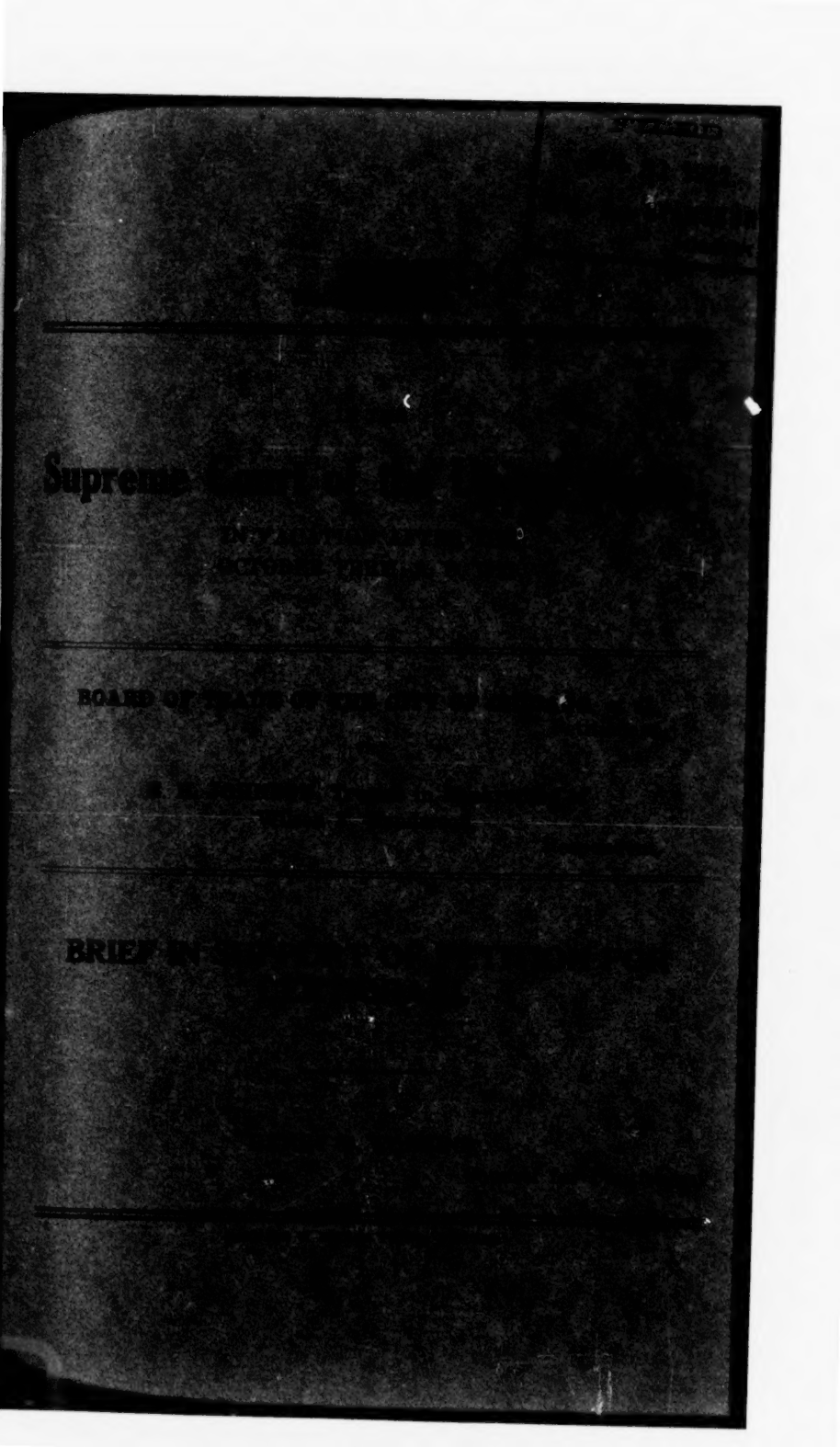
The rule will bear no such construction. It requires that the application for transfer shall be posted for "*at least* ten days *when*, if no objection is made, it shall be assumed the member has no outstanding claims against

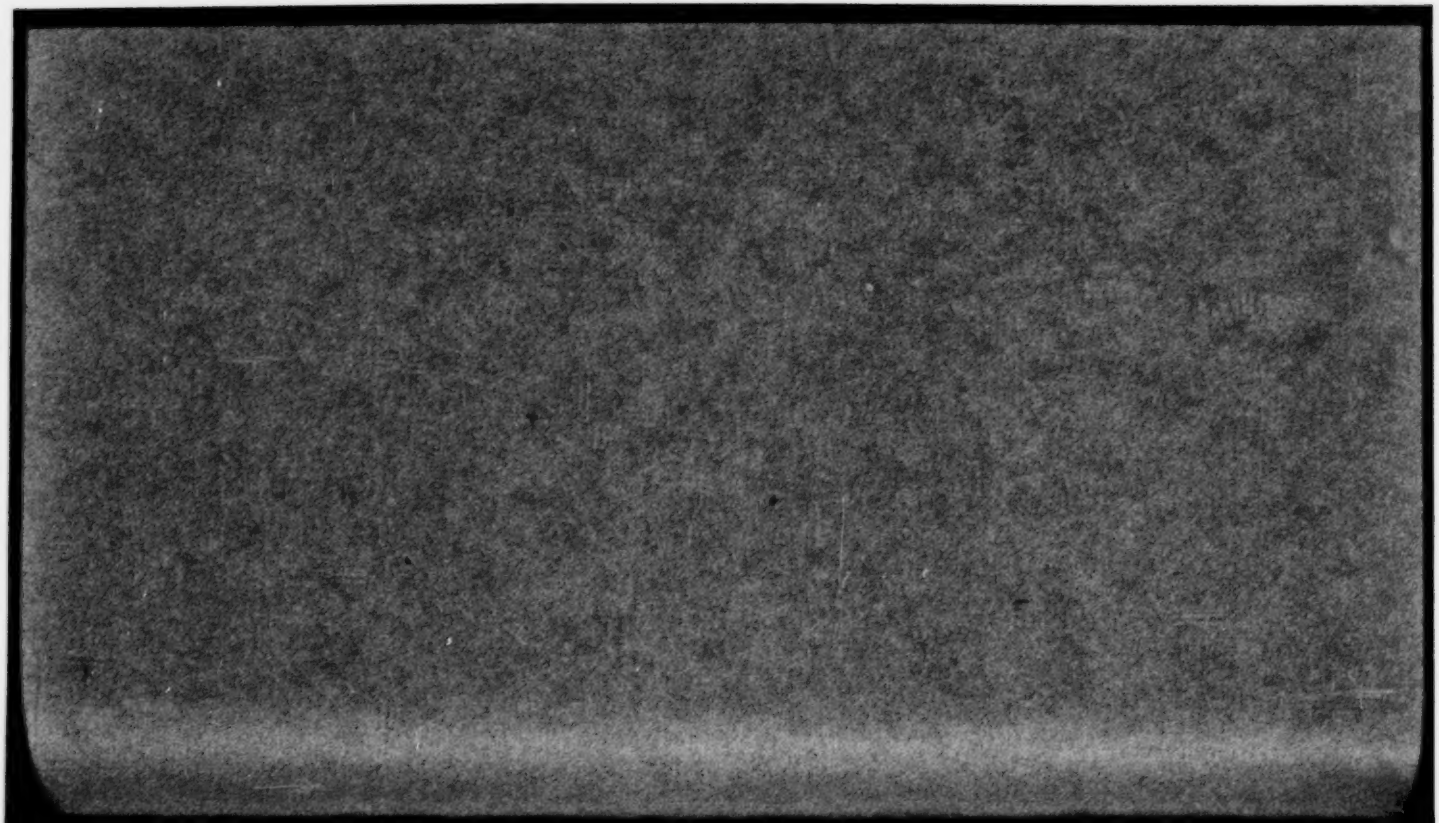
him." This merely provides that there must be a posting for at least ten days before the board of directors may approve the transfer. The application must be posted on the bulletin and remain there at least ten days, but the board of directors, by not then acting, may prolong the period for posting. It remains posted there until it is acted upon by the board of directors. Any member, having an outstanding claim against the member may object to the transfer at any time while the application is thus posted; that is, before the board of directors shall approve the transfer. The "when" in the last clause refers not to ten days, but to the period of posting. This is necessarily so, because when the board of directors acts it must first find that the selling member *has*—that is, at that time—against him no outstanding claim held by a member.

There is nothing in the rules of this exchange to embarrass a trustee of a bankrupt member in the administration of the estate. While the rules do not provide that exchange creditors of a member may *compel* him to sell his membership to pay them, they do contemplate that a member may request and secure the sale of his membership, if he pays his debts to other members, or is indebted to no other members. If the membership is an asset, the bankruptcy court may, of course, order him to make such application for sale. If this discloses debts to other members in excess of the value of the membership, his trustee should, and will, elect not to take the membership. If debts are disclosed of less amount than the value of the membership, the trustee may secure the surplus by settling these debts. If there are no such debts he may secure the entire proceeds.

It is, therefore, respectfully submitted that the decree of the District Court should be reversed.

HENRY S. ROBBINS,
Counsel for Petitioners.





IN THE

SUPREME COURT OF THE UNITED STATES,

IN VACATION AFTER THE
OCTOBER TERM, A. D. 1921.

BOARD OF TRADE OF THE CITY OF CHICAGO, et al.,
Petitioners,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Question of Jurisdiction.

The opinion of the Circuit Court of Appeals says that "the record and undenied statements in open court show that at the time the bankruptcy proceedings were commenced * * * Henderson was a citizen of the State of Florida."

There is nothing in the record to support this statement. On the contrary, the verified creditors' petition to have Henderson adjudged a bankrupt (Rec., 6) expressly states that Henderson was a resident of Chicago, and if he had been a resident of the Florida district, the District Court for the Illinois district would have been without jurisdiction to adjudge him a bankrupt, and it would have been the duty of the Circuit Court of Appeals

of its own motion to have directed the dismissal, not only of the petition involved in this record, but the entire bankruptcy proceeding. Furthermore, that court was not warranted in accepting, in lieu of the plain statements of the record, "undenied statements made in open court" by respondent's counsel.

Jurisdiction in the District Court, therefore, could not be sustained within the exception in Section 23-b of the Bankruptcy Act, which permits suits by the trustee in the courts where the bankrupt might have brought them, had proceedings in bankruptcy not intervened.

The Circuit Court of Appeals did not itself rely upon this basis for jurisdiction; for it proceeded to uphold the jurisdiction of the District Court upon the ground that the Board of Trade and its co-petitioners here were not "adverse claimants" within the jurisdictional provisions of the Bankruptcy Act.

Under the Bankruptcy Act of 1867, suits by an assignee in bankruptcy "against any person claiming an adverse interest" and suits by such claimant against such trustee were included in the plenary jurisdiction of the Circuit and the District Courts. The present Bankruptcy Act (Section 23) conferred on the Circuit Courts a limited jurisdiction "of all controversies in law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees," but provided that, unless the proposed defendant consented, such suits *by the trustee* could only be brought in the courts where the bankrupt might have sued, if proceedings in bankruptcy had not been instituted, except suits under Section 60-b, 67-e and 70-e of the Bankruptcy Act, which sections—despite what the opinion of the court says—have not the slightest relation to the case at bar.

While this distinction between summary proceedings in nkruptcy—in which parties to the bankruptcy proceedgs are the only interested parties—and independent ntroversies between the trustee in bankruptcy on the e side and strangers to the bankruptcy proceedings on e other is expressed in somewhat different language in ese two bankruptcy statutes, the distinction between e two proceedings is identical under both statutes.

First National Bank v. *Title and Trust Company*, 198 U. S. 280-9.

The Circuit Court of Appeals has decided that neither e Board of Trade nor the co-petitioners (all of whom e strangers to the bankruptcy proceeding) are to be rerded as adverse claimants, although they claim, as does e trustee, what this court has decided to be property oject to taxation (*Anderson* v. *Duer*, Oct. Term, 1921.)

To reach this result that court confines adverse imants to those "who (1) have possession of the propy, claiming ownership thereof or a lien thereon, or (2) o deny owing any money claimed by the trustee."

There is no valid reason, and no authority, for thus iting the character of adverse claimants, or thereby luding your petitioners from that category. No reaexists for holding to be an adverse claimant one, who ppens to be the owner of property susceptible of possion, or one indebted to the bankrupt on a money dend and denying the same character to one who has or erts a right which relates—as here—to intangible perty.

An adverse claimant is anyone who claims adversely another some right which the law recognizes and will tect. Where—as here—a trustee seeks to defeat a ntract between a bankrupt and the Board of Trade,

which is a stranger to the bankruptcy proceedings, or where the trustee is attempting to defeat a right under a charter from a state claimed by such stranger to the proceeding, the latter is an adverse claimant, especially where the right claimed relates to or affects what this court has held to be valuable property.

Within the principle, as thus properly defined, the Board of Trade is an adverse claimant. Under its charter it has the right to suspend a member until all his debts to all other members are paid. This is but a part of its disciplinary power over its members. The Illinois courts have many time upheld, and many times refused to interfere with, the exercise of this disciplinary power.

The Board of Trade asserts, and the trustee denies, the continuance of this power *after* the institution of bankruptcy proceedings. On what theory can it be claimed that this did not present a controversy, and a substantial and *bona fide* controversy, between the trustee and a stranger to the bankruptcy proceeding, who is an adverse claimant within the meaning of the Bankruptcy Act?

Later in this brief it will be shown that this right to suspend continues after the institution of bankruptcy proceedings, and that the Circuit Court of Appeals erred in not so holding. But this is not the question here. As respects jurisdiction, the only question is whether the Board's claim of the right to discipline its members after bankruptcy proceedings are instituted is a substantial one. If it is, the District Court is without jurisdiction. And this question of jurisdiction may not be disposed of—as the Circuit Court of Appeals has attempted to dispose of it—by saying that the court is against this adverse claimant on the merits of its claim.

The Board of Trade is not the only claimant. The Trustee also made defendants to his petition the co-peti-

ners (members of the Board of Trade) who have unid claims against Lipsey & Company, Henderson's corration, and the petition prayed for, and the District urt granted, relief against these claimants.

All of them claim that, under the rules of the Board Trade, Henderson's membership could not be transred until their claims were paid or satisfactorily setd. Co-petitioners Bridge & Leonard also claimed the ht to have the Board of Trade suspend Henderson until psey & Company's debt to them was paid.

These debts of Lipsey & Company were valid liens upon membership for sums which in the aggregate far ceeded its value. For a lien often arises out of nere right to *withhold* property from the owner until pays a debt. Certain common law liens do not include power of sale. (25 Cyc., 662, 680, 19 Halsbury's Laws England 25.) The rules of the Board of Trade enabled se co-petitioners to prevent Henderson and his asns from realizing by a sale of the membership without t paying or settling co-petitioners' claims.

The Circuit Court of Appeals disposed of the question jurisdiction thus raised by deciding co-petitioners' ims to liens against them on the *merits*. We shall show er in this brief that that court was in error in so decid- (see pp. 8-13 of this brief). In disposing of pleas the jurisdiction, the question is, not whether the claims are on the right or wrong side of the controversy, only whether there is a real controversy.

As these co-petitioners claimed liens upon the membership of Henderson, this case is not distinguishable m *First National Bank* v. *Chicago Title & Trust Co.*, U. S. 280, in which case this court issued a certiorari, ersed this same Circuit Court of Appeals, and held t the District Court was without jurisdiction.

In that case the Storage Company claimed certain property as against the trustee in bankruptcy, because it had issued therefor certain warehouse receipts. Here the Board of Trade asserts the right to withhold the transfer of the membership to the trustee because of certain of its rules and its implied contracts with its members. In the First National Bank case the holders of the warehouse receipts claimed liens upon the property. In the case at bar your co-petitioners claim liens upon the membership. In both cases the claims of the corporations, as well as the claims of those asserting liens, were *bona fide* and substantial. In the *First National Bank case* this court decided not only that the Circuit Court of Appeals had erred upon the question of jurisdiction, but also that this question was of sufficient importance to warrant a certiorari. Why is not this also true in the present case? Certainly the particular question arising in the present case will recur much more frequently than would have the particular question in the *First National Bank case.*

The case of *Galbraith* v. *Vallely,* 256 U. S. 46, seems also to be a direct authority for the writ of certiorari in the present case.

The intent of Congress has been to make this court the final judge of questions respecting the jurisdiction of the Federal courts, and although this court has held (*Schweer* v. *Brown,* 195 U. S. 171) that the particular question of jurisdiction here raised is not within Section 5 of the Judiciary Act authorizing appeals directly to this court, the present record does squarely present the question, whether the Federal court had any jurisdiction of this particular controversy; and by reason of the case just cited your petitioners may present this question to this court only through the issuance of a certiorari.

It is true that, where the trustee is *in possession* of the property in controversy, he may maintain in the Court of Bankruptcy a plenary suit against strangers to the bankruptcy proceeding. But so far as this membership was susceptible of possession, it was in possession and control of the Board of Trade. The membership could not be transferred until the Board of Trade accepted the proposed transferee as a member, and for this reason the decree ordered—and it was necessary that it should order —the Board of Trade to transfer the membership to the trustee.

The Circuit Court of Appeals, therefore, properly ignored the contention of counsel for respondent—which will be renewed in this court—that the membership passed into the *constructive* possession of the trustee by reason of the adjudication in bankruptcy.

In *O'Dell* v. *Boyden*, 150 Fed. 731, which counsel cite in support of this contention, a member of the New York Stock Exchange became a bankrupt and under the order of the Bankruptcy Court requested the Exchange to sell his membership; and the Exchange sanctioned the transfer of the membership to one whom the Exchange accepted as a member, and the proceeds of such sale were held by officials of the Exchange awaiting distribution pursuant to its rules, which gave priority in such distribution to its own members. The Exchange itself made no claim to any of the money. The right of creditor-members to priority of distribution was conceded. The controversy related only to the residue of the proceeds after the payments to the Exchange members. After the sale a claimant appeared for this residue, and the only controversy was between the trustee and this claimant. Neither the Exchange nor its creditor members were in any sense adverse claimants. Before the appearance of this claimant the Exchange had, in fact,

accepted the position of agent or bailee for the trustee, and thus under *Bryan* v. *Bernheimer,* 181 U. S. 188, the Exchange was in no sense an adverse claimant. The validity of its rules were not questioned, and its position was entirely different from that of the Board of Trade in the case at bar.

II.

The Merits.

The Circuit Court of Appeals erred on the merits in two respects:

(1) It held that the right of the Board of Trade under its rules to suspend a member until his debts to other members were paid ceased upon the appointment of a trustee in bankruptcy—even as respects debts which had accrued *before* the bankruptcy proceedings—because such suspension "would merely destroy the sale value" of the membership, which "the District Court had the power to prevent."

(2) That court construed the rules to mean that when an application for transfer of a membership had been posted and no objection was filed *within ten days,* "the right to transfer becomes absolute without action by the Board," and that upon being adjudicated a bankrupt "Henderson ceased to be a member, and was of course not thereafter subject to discipline by the Board," all his rights having passed to the trustee. In this the Circuit Court of Appeals affirmed the expressed finding of the decree of the District Court. (Rec., 40.)

One fundamental error here is the assertion that upon an adjudication in bankruptcy the title to the membership *ipso facto* passes to the trustee. This is in direct conflict with

Sparhawk v. *Yerkes,* 142 U. S. 1,

where this court held that the right of a trustee in bankruptcy of an exchange member, whose membership was incumbered by a rule of the exchange providing for his suspension until his debts to other members were paid—was only the right to *elect* within a reasonable time whether to take the membership or not, and that if such trustee should elect not to take, the membership remains the property of the bankrupt—thus placing the trustee, as respects a membership on an exchange, in the same position that he occupies respecting an unexpired leasehold.

This theory that the trustee has only the power to elect is plainly the proper and practical one; for it permits the member to continue to earn his living after bankruptcy by acting as a broker or agent in exchange transactions, until and unless the Bankruptcy court, to avoid incumbering the membership with new debts to other members, shall enjoin him from further trading.

If the membership is already incumbered by debts to members beyond its value, so that the trustee should elect not to take it and pay the dues upon it, the bankrupt member may continue to earn a living upon the Exchange so long as his Exchange creditors indulge him, and this they frequently will do as the best way to enable him to ultimately pay or compromise his debts to them, and thereby become again a member in good standing as was the case in *Sparhawk* v. *Yerkes*.

A rule of the Board of Trade provides (Rec., 17):

> "When any member of this Association has been duly convicted of failure to comply with the terms of any business obligation * * * he shall be suspended from all privileges of the Board of Trade * * * until all his outstanding obligations to members of the said Board of Trade shall have been settled, when he may * * * be reinstated."

Another rule provides (Rec., 18) that before a member shall be suspended he shall have notice and a copy of the charge upon which suspension is sought.

In the *Sparhawk case*, as well as in *Page* v. *Edmunds*, 187 U. S. 601, this court has upheld, as against a trustee in bankruptcy, exchange rules which automatically suspend an insolvent member and provide that his debts to other members should be first paid; and no distinction is apparent between such a rule and one which, like the one at bar, makes such suspension discretionary with the board of directors of the Exchange.

As there is no rule of the Exchange fixing a time limit, within which such charge shall be preferred or the suspension ordered—the rule being applicable to "any member,"—one is subject to suspension under this rule so long as he remains a member. If a proceeding to suspend is commenced before the Board of Directors has sanctioned a sale of the membership, the membership becomes impaired under Rule X, hereafter mentioned, and the Board of Directors may not sanction the sale until the proceeding to suspend is disposed of, and, if the member is suspended, until he has adjusted his debts to other members.

The Circuit Court of Appeals avoids this inevitable conclusion by holding (1) that Henderson had "ceased to be a member" before Bridge & Leonard filed their petition to suspend him, and "was of course not thereafter subject to discipline by the Board"; and (2) that the District Court had "power to prevent" a suspension under this rule because such suspension "would merely destroy the sale value" of the membership.

This is but another way of saying that the trustee takes the membership free from conditions which clog it as respects the member—a proposition which is at vari-

ance with several decisions of this court, which recognize and uphold the restrictions upon a membership which the rules of the exchange impose.

Hyde v. *Woods*, 94 U. S. 525,

where this court, in upholding a rule giving priority to exchange creditors, said:

> "A seat in this board is not a matter of absolute purchase. Though we have said it is property, it is incumbered with conditions when purchased, without which it could not be obtained. It never was free from the conditions of Article 15, neither when Fenn bought, nor at any time before or since. That rule entered into and became an incident of the property when it was created, and remains a part of it into whose hands soever it may come." And

Sparhawk v. *Yerkes*, 142 U. S. 1,

where this court again held a seat in a stock exchange to be "property, not absolute and unqualified, but limited and restricted by the rules of the association."

The Transfer of a Membership. Rule X (Rec., 10) provides (Section 1) that one may become a member only after ten days' notice of such application has been posted on the bulletin of the Exchange, and upon the approval of at least ten of the eighteen directors, and that

> "Every member shall be entitled to transfer his membership when he * * * has against him no outstanding * * * claims or contracts held by members of this Association, and said membership is not in any way impaired or forfeited * * * *to any person eligible to membership who may be approved for membership by the Board of Directors,* after due notice by posting, as provided in Section 1 of this rule * * * Prior to the transfer of any membership, application for such transfer shall be posted upon the bulletin of the Exchange for *at least* ten days, when, if no objection is made, it shall be assumed the member has no outstanding claims against him."

Thus as a prerequisite to the transfer of a membership, a member desiring to transfer his membership must produce a person willing to purchase, and the name of this person must be posted on the bulletin board of the Exchange for ten days, and thereafter such applicant must be approved for membership by the Board of Directors. The Board of Directors may not, under this rule, approve the transfer, if the membership is impaired by the pendency of, or suspension in, disciplinary proceedings.

What operates to transfer the membership is the action of the Board of Directors in accepting the new member.

The Circuit Court of Appeals, therefore, misconstrued this rule in holding, as it did, that by reason of the failure of creditors to object within ten days "the right of transfer becomes absolute without action by the Board," and that thereafter the selling member ceases to be a member or subject to discipline.

This membership rule is also construed by the Circuit Court of Appeals to mean that objections to the transfer of the membership must be presented *within ten days.* The rule will bear no such construction. It requires that the application for transfer shall be posted for "*at least* ten days *when*, if no objection is made, it shall be assumed the member has no oustanding claims against him." This merely provides that there must be a posting for at least ten days before the Board of Directors may approve the transfer. The application must be posted on the bulletin and remain there at least ten days, but the Board of Directors, by not then acting, may prolong the period for posting. It remains posted there until it is acted upon by the Board of Directors. Any member, having an outstanding claim against the member may object to the transfer at any time while the application is thus posted; that is, before the Board of Directors shall approve

the transfer. The "when" in the last clause refers not to ten days, but to the period of posting. This is necessarily so, because when the Board of Directors acts it must first find that the selling member *has*—that is, at that time—against him no outstanding claim held by a member.

There is nothing in the rules of this Exchange to embarrass a trustee of a bankrupt member in the administration of the estate. While the rules do not provide that Exchange creditors of a member may *compel* him to sell his membership to pay them, they do contemplate that a member may request and secure the sale of his membership, if he pays his debts to other members, or is indebted to no other members. The Bankruptcy Court may, of course, order him to make such application for sale. If this discloses debts to other members in excess of the value of the membership, his trustee should, and will, elect not to take the membership. If debts are disclosed of less amount than the value of the membership, the trustee may secure the surplus by settling these debts. If there are no such debts he may secure the entire proceeds.

It is, therefore, respectfully submitted that the writ of certiorari should issue because (1) the District Court was without jurisdiction, and (2) without such writ your petitioners will be deprived of the benefit of the decisions of this court.

HENRY S. ROBBINS,
Counsel for Petitioners.

No. 90

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1923.

BOARD OF TRADE OF THE CITY OF CHICAGO, et al.,
Petitioners,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of WILSON F. HENDERSON,
Respondent.

Certiorari to the Circuit Court of Appeals of the Seventh Circuit.

BRIEF FOR RESPONDENT.

ROBERT N. ERSKINE,
F. WILLIAM KRAFT,
Counsel for Respondent.

HAWKINS & LOOMIS CO., LAW PRINTERS, CHICAGO.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1923.

BOARD OF TRADE OF THE CITY OF CHICAGO, et al., *Petitioners,* vs. E. H. JOHNSON, Trustee in Bankruptcy of WILSON F. HENDERSON, *Respondent.*	Certiorari to the Circuit Court of Appeals of the Seventh Circuit.

BRIEF FOR RESPONDENT.

STATEMENT.

Counsel for petitioners precedes his statement of facts by setting forth two questions as presented under the record. We will agree that under counsel's assignment of errors he raises two questions, namely: that the District Court did not have jurisdiction, and that the District Court decided erroneously upon the merits. We are compelled, however, to take sharp issue with the questions as they are presented. The order of the District Court was based upon its finding of facts, including its interpretation of the rules of the Board of Trade, pursuant to which the Court took jurisdiction and considered and decided the merits of the claims made by the petitioners.

The jurisdictional questions now before the Court relate to and involve an interpretation of the rules of the Board of Trade and certain undisputed facts and circumstances involving largely the point of time. It is to be determined whether a Chicago Board of Trade member-

ship was property which came into the possession and control of the trustee in bankruptcy; and, even if not, whether the petitioners herein were in fact adverse claimants at the time of the institution of the bankruptcy proceedings. The question on the merits likewise involves a consideration of such rules with reference to the admitted facts.

The bankrupt, Wilson F. Henderson, held and owned a membership in his own right in the Board of Trade of the City of Chicago, one of the petitioners herein. The other petitioners are creditors of the corporation, known as Lipsey & Company, of which said bankrupt was president, and claim as such creditors to have a lien upon such membership superior to the rights of the trustee in bankruptcy. The Board of Trade itself does not claim any financial interest, lien or charge as against said membership, but only the right to enforce its rules under its own interpretation thereof. Its position is entirely different, therefore, from the other petitioners, but for convenience all will be referred to as "Petitioners" herein. The respondent in this proceeding, being the trustee in bankruptcy, will hereafter be referred to as "Trustee."

The said trustee in the course of the bankruptcy procedings filed his petition (Rec. 8) and subsequently an amendment and supplement thereto (Rec. 20). The prayer thereof was to require petitioners to show cause (Rec. 22), in substance why the trustee's right and title to said membership with power to sell free and clear of liens, should not be recognized and sustained.

After pleas to the jurisdiction were overruled, the petitioners filed their answers (Rec. 25, 30). There being no dispute of material facts, the matter was submitted to the Court by agreement upon such petition and answer and without evidence. The order of the District Court made a finding of facts. (Rec. 31.)

The statement of counsel for petitioners does not fully set forth the substance of all the rules of the Board of Trade which are involved, nor all of the facts. Furthermore, counsel presents as positive facts in the case, his own application of the rules to the facts. Since that is the very question for the Court, counsel's statement consists more of argument or presumption of facts than a statement of the ultimate facts before the Court. The only rules of the Board of Trade which are material are shown either in the trustee's petition or the answers of petitioners herein, in substance as follows:

Rule X, Sec. 1 (Rec. 9). This section provides how applications for membership shall be made and states that "any male person" may be admitted, upon election, "and upon payment of an initiation fee of $25,000, or on presentation of an unimpaired or unforfeited membership, duly transferred, and by signing an agreement to abide by the rules * * *."

Rule X, Sec. 2 (Rec. 9). "Every member shall be entitled to transfer his membership when he has paid all assessments due and has against him no outstanding unadjusted or unsettled claims or contracts held by members of this association, and said membership is not in any way impaired or forfeited, upon the payment of $250, to any person eligible to membership who may be approved for membership by the Board of Directors, after due notice by posting, as provided in Section 1 of this rule. The membership of a deceased member shall be transferable in like manner by his legal representative without the payment of the transfer fee. Prior to the transfer of any membership, application for such transfer shall be posted upon the bulletin of the Exchange for at least ten days when, if no objection is made, it shall be assumed the member has no outstanding claims against him * * *."

Rule XXII, Sec. 11 (Rec. 10). This rule provides that a corporation may do business on the board when two of its officers are members of the board, but that in case of default by the corporation such members "shall be subject to be disciplined in the same manner as they are subject to be disciplined for failure to comply with the terms of any business obligation of their own."

Rule IV, Secs. 7 *and* 9 (Rec. 26). These rules stipulate the various conditions pursuant to which a member may be suspended, and subsequently reinstated, as well as the conditions for expulsion.

Rule IV, Secs. 16 *and* 17 (Rec. 27). These provide that all charges for any default, misconduct or offense shall be in writing and signed and that no member shall be censured, suspended or expelled, except upon notice, and opportunity to be heard, and an examination of the charges by the Board of Directors.

There is no rule of the board providing for any certificate or other evidence of membership and no rule providing for the sale or other appropriation of a membership for the benefit of creditors against the will of the member.

The bankrupt had been a member of the Board of Trade for many years and also president of the corporation of Lipsey & Company, doing business on the board. In March, 1919, that company became insolvent and ceased doing business. Thereafter on May 1, 1919, said bankrupt posted notices of his application to transfer his membership in recognition of the requirements of the rules of the board and thereafter he did no business on the Board of Trade. Certain objections to a transfer were filed between May 1 and 10, 1919, but all of said objections so filed were withdrawn or disposed of not later than December, 1919. One of the objections filed

at that time but withdrawn was by Bridge & Leonard, who are petitioners herein.

On January 24, 1920, an involuntary petition in bankruptcy was filed against said Wilson F. Henderson. On that day, it is admitted, the bankrupt's membership was not in any way impaired or forfeited nor were any objections then on file based on any outstanding unadjusted or unsettled claims or contracts, or otherwise, and all assessments due thereon from him were paid. Such membership had a value at that time of approximately $10,500.

Five days later on January 29, 1920, objections to the transfer of the membership of said Henderson were filed with the Board of Trade by the petitioners, Armour Grain Company, George A. Hellman and James E. Bennett & Company, as creditors of Lipsey & Company. Subsequently Henderson was adjudged a bankrupt, the trustee was appointed, his petition instituting these proceedings was filed in June, 1920, and plea thereto to the jurisdiction of the court was heard and finally denied in May, 1921.

Thereafter on June 17, 1921, said Bridge & Leonard, also a corporation creditor, filed proceedings for the suspension of said Henderson. Thereupon the trustee filed an amendment and supplement to his petition and all petitioners herein filed their answers to the Trustee's petition as so amended. The Board of Trade claims no right, title, interest, or lien in, to, or against, said membership itself, but insists upon its right to protect its members and their claims under the guise of enforcing its rules; all other petitioners are creditors—not of the bankrupt—but of the corporation known as Lipsey & Company and do not claim any right to sell or enjoy the said membership or the proceeds thereof, but only insist upon their right at any time and despite the

bankruptcy to prevent any transfer of the members
or to institute proceedings for the suspension of
bankrupt.

The order of the District Court (Rec. 31) found
determined that the said membership of the bankr
in the said Board of Trade had passed to and come i
the custody and control of the Trustee in Bankrupt
that at the time of bankruptcy, the bankrupt had c
plied with all rules of the board so that on such
he had full right and power to transfer such members
free and clear of all claims, and that the Trustee t
and held such membership, free and clear of any clai
objections, liens, or otherwise. Claims of the sev
petitioners were, therefore, overruled and dismissed,
Board of Trade was ordered to recognize said Tru
as such owner for the purpose of sale only and to pe
such sale.

We particularly refer the Court to the record for
full text and findings of such order. That order is
before this court for its consideration by reason of
affirmance thereof by the Circuit Court of Appeals
the Seventh Circuit.

ARGUMENT.

Questions of jurisdiction.

With reference to the suggestion in the opinion of the Circuit Court of Appeals that the District Court had jurisdiction because the bankrupt was a resident of Florida, we concede that the record does not support this statement. He was a resident of Illinois at the time of the filing of the bankruptcy petition and voluntarily appeared and filed his schedules in the District Court for the Northern District of Illinois. Whether or not he may have subsequently become a resident of Florida and the effect thereof is immaterial, because the trustee herein does not rely on diversity of citizenship as a basis of jurisdiction; and as admitted by opposing counsel the Circuit Court of Appeals did not so rely.

The jurisdiction of the District Court over the proceedings here under review is fully sustained upon any one of three distinct grounds. *First,* the property in question was in the possession and control of the bankruptcy court and its trustee. *Second,* none of the petitioners were in fact such adverse claimants at the time of the institution of the bankruptcy proceedings as would entitle them to interpose objection to the jurisdiction of the District Court. *Third,* Sec. 70, Sub. e, of Bankruptcy Act expressly confers jurisdiction on the bankruptcy court, and that section is one of the exceptions named in Section 23b of the Bankruptcy Act. We shall discuss these propositions in that order.

First. The property in question was in the possession and control of the bankruptcy court and its trustee.

The jurisdiction of a District Court to deal with property of which it has actual or constructive possession by summary proceedings has been recognized over and over again, and this includes the right of the District Court to settle all adverse claims relating to such property. We do not deem it necessary to go over the facts of each case cited below but in the following cases it will be found that the courts have dealt with similar situations to the one at bar and have reviewed the questions of law here under consideration. The following cases fully justify the judgment of the District Court in the case upon the question of jurisdiction.

Whitney v. *Wenman*, 198 U. S. 539.
In re Hoey, 290 Fed. 116.
In re Gottlieb & Co., 245 Fed. 139.
Orinoco Iron Co. v. *Metzel*, 230 Fed. 40.
In re Wegman Piano Co., 228 Fed. 60.
O'Dell v. *Boyden*, 150 Fed. 731.
Collier on Bankruptcy, 12th Ed., Vol. 1, pp. 541-544.

If the proceedings under review constituted simply a controversy between the trustee and adverse claimants to property not in the possession of the trustee then a summary proceeding in the bankruptcy court without the consent of such claimants could not be prosecuted. The District Court would then have had no jurisdiction. Section 23b of the Bankruptcy Act is referred to as an exception to the general power of the District Court to cause the assets in bankruptcy to be collected, etc. That section is the sole basis for petitioner's attack upon the jurisdiction of the District Court to hear and determine the questions raised under the petition of the trustee in bankruptcy, but it relates primarily, at least, to the recovery of property, that is, to getting the property into

the hands of the trustee. There can be no question of the power of the District Court to administer property which is in fact in the possession of the trustee and to adjudicate all questions relating thereto.

The question for consideration relates to whether or not in legal contemplation the membership of the bankrupt in the Board of Trade came into the possession and control of the trustee. If the membership was in the possession and control of the bankrupt on the day when the petition in bankruptcy against him was filed, then upon principle and law it passed to the possession and custody of the trustee. The proposition that such a membership is property the title to which vests in the trustee will be conclusively sustained, *post,* but the fact will be assumed for the purpose of the immediate discussion.

We call the Court's attention to the fact that it is freely admitted that on the day when the bankruptcy proceedings were initiated, the bankrupt was an unquestioned member of the Board. We submit therefore that, being a member in good standing, the bankrupt had full title to the membership and all property interest therein; and it necessarily follows as a matter of law that he had possession thereof.

A membership in the Chicago Board of Trade is not under its present rules, represented by a certificate or other tangible evidence thereof, but this fact does not affect either the title or possession of the member. Such property is therefore purely intangible, which means that it can only be in constructive possession as distinguished from actual in the sense of physical possession. Title to property carries with it right of possession but that is not to be confused with constructive possession. The latter term is used and applies with reference to property which is not subject to manual delivery, hence

to actual possession. Right of possession exists as to any property, tangible or intangible, in favor of the person having title thereto.

The contention is made by opposing counsel that under Rule X, Section 1 of the Board of Trade rules no person can be a member unless accepted in accordance therewith by the Board, and therefore neither title nor possession of the bankrupt membership can pass to the trustee. Such a contention has been expressly overruled in *Board of Trade* v. *Weston*, 243 Fed. 332 under the authority of *Hyde* v. *Woods*, 94 U. S. 523 and *Page* v. *Edmunds*, 187 U. S. 596.

It was held in the *Weston case* just cited, that a Chicago Board of Trade membership is property under the Bankruptcy Act, but that the trustee took title thereto only for the purpose of sale. We call this Court's attention to the provision of the order of the District Court here under review (Rec. 31) wherein the right of the trustee was expressly limited to the power to sell. Such a limitation as a matter of law would be imposed even if not expressed in the Court's order. We quote from Collier on Bankruptcy (12th Ed., Vol. 2, p. 1112) with reference to the property rights of the trustee:

> "He takes an absolute title which, of course, carries with it the right of possession. He is vested with such title only for the purpose of administration and distribution of the estate among the bankrupt's creditors."

It is not necessary to rely upon principle or the like in support of the propostion that a membership in a Board of Trade passes to the custody and possession of the trustee. The question has been expressly passed upon in the case of *O'Dell* v. *Boyden*, 150 Fed 731 (C. C. A. 6th Cir.), and again in the very recent case of *In Re Hoey*, 290 Fed. 116. (C. C. A. 2d Cir.)

The question of jurisdiction was expressly raised in the *O'Dell case*, and the opinion of the Circuit Court of Appeals sustained the jurisdiction of the District Court because it was held that the possession of a membership in the New York Stock Exchange was in the Trustee. An examination of that opinion will disclose that the rules of the Exchange then being considered were strikingly similar to the rules of the Chicago Board of Trade. The plea of jurisdiction by O'Dell expressly denied the trustee's possession of the membership; and it was conceded that he was an adverse claimant in good faith of an equitable lien upon the membership at the time of the bankruptcy. The Court there said (p. 737):

> "The 'seat' or 'membership' continued to be the seat of Henrotin, and was a pecuniary asset which passed to his trustee. It was as much in his custody and possession as such a species of property is capable of. To deny the trustee's possession would be to deny the capability of possession of a chose in action or other incorporeal right or equity. The possession may be constructive, and not manual; but it is only because such property is not capable of a more tangible custody. Only through a court of equity can the pecuniary value of such an asset be realized to creditors or assignees. Only by decree in *personam* compelling the bankrupt member can such a transfer of membership be effectuated as will put the buyer in the place of Henrotin as a member. Over him for that purpose the bankrupt court has exclusive control, and in this sense, also, may it be said that the 'seat' or 'membership' was in *custodia legis* when the trustee sought the aid of the court to adjudicate the claims and liens asserted by O'Dell.

Counsel for petitioners devote considerable attention to this *O'Dell case* in an attempt to explain away and distinguish it from the case at bar. We submit that the Court's conclusions in that case cannot be avoided but are here directly in point upon the questions under con-

cussion. It is said of that case that the trustee's possession, if any, was because of the acquiescence of the Stock Exchange; again because the membership had been sold and the proceeds were in the possession of the Stock Exchange, therefore, it was a chose in action due from the Exchange; and again the distinction is recognized that it was an outside person and not the Exchange or its creditor members who was the adverse claimant.

The contentions of petitioners have no basis in any language used in the Court's opinion in the *O'Dell case.* The Court there primarily considered the question of whether the membership itself came into the possession and control of the trustee, hence within the jurisdiction of the Bankruptcy Court; and finding that it did, therefore held that the proceeds were likewise subject to administration, and all claims were subject to adjudication, in summary proceedings. All attempts to distinguish the *O'Dell case* will fail upon an examination of the opinion.

We find that the case of *O'Dell* v. *Boyden* has been very frequently accepted, cited and quoted with approval not only by numerous of the Federal courts but by such well known text book authorities on bankruptcy as Black, Collier, Loveland and Remington. Indeed we have failed to find after considerable search that the opinion of Judge Lurton in that case has ever been criticised, dissented from or even distinguished as an authority upon the question of jurisdiction therein involved. It was cited in *Board of Trade* v. *Weston,* 243 Fed. 332 (C. C. A. 7th Cir.) wherein a Chicago Board of Trade membership was held to be an asset in bankruptcy. It was not only cited but extensively quoted from by the Circuit Court of Appeals of the Second Circuit in the very recent case of *in re Hoey,* 290 Fed. 116 to which we call the Court's

particular attention. The opinion there rendered was solely upon the question of jurisdiction; the possession of a membership of the New York Stock Exchange was involved; and the Court after a review of numerous decisions of this Court, including those cited by us in this brief, sustained the jurisdiction of the District Court and affirmed the order thereof requiring claimants in the summary proceedings to present and adjudicate their claims against such membership.

Counsel for petitioners argues that the membership is not susceptible of ordinary sale; that the rules require that the Board post the membership for and sanction the transfer; and that the membership cannot be transferred except by or with consent of the Board. There is no basis for or merit in such contentions.

Section 2 of Rule X (Rec. 9) expressly gives a member the right to transfer his membership subject to conditions. The member, not the Board, posts the application for transfer. This right to transfer is a valuable element of the membership. If the rules are complied with, neither the Board nor any of its members can prevent a transfer by virtue of any provision of the rules. It is true that under Section 1 of Rule X (Rec. 9) no person can become a member unless accepted by the Board, but when accepted, he complies with the rules either by paying an initiation fee or by presenting an unimpaired or unforfeited membership, *duly transferred*. There is no rule of the Board which permits the Board to arbitrarily refuse to recognize a transfer of the membership from one who shall have complied with the provisions of Section 2, Rule X, to one who had been accepted under Section 1, Rule X. The provisions of Section 1 have no effect upon that quality or privilege which belongs to every membership under Section 2, namely, transferability. This transferability is what makes the membership in a legal

sense property as a part of the bankrupt estate; and possession is one element of property.

Counsel for petitioners deny that there can be constructive possession of the membership in question and cite in support of their position the case of *In Re Rathman,* 183 Fed. 913, to the effect that actual possession is necessary. An examination of that opinion, however, will disclose that the property involved in that case was in fact in the physical possession of the adverse claimant. The question being considered was upon the contention that the right of possession in the Trustee to the property, in fact gave him constructive possession. Such terms are not synonymous and it was only in this connection the Court held that actual possession was necessary.

Whether there be actual physical possession or constructive possession depend in each particular case upon the nature of the property involved. With title to property goes the right of possession which may result in either actual or constructive possession; but if an adverse party has actual possession there can of course be no constructive possession in the Trustee. In the case at bar the Trustee acquired constructive possession of the Board of Trade membership because the very nature of that property does not permit of a physical taking. The ownership and privilege of enjoyment of this membership was in the bankrupt at the time of bankruptcy and at that time no one else had or could have had any actual possession thereof.

Arguments that a membership of this character was not property such as to be an asset in bankruptcy have repeatedly been made and overruled by this Court. It is held that whatever onerous conditions there may be, as imposed by the rules, nevertheless the membership is property. We submit that the same

principles sustain the proposition that this property, even though of a peculiar intangible nature, nevertheless carries with it the inherent characteristic of possession which because of that intangible nature is constructive rather than physical. Under the facts of this case it can therefore be properly said that the trustee in bankruptcy took the actual constructive possession of the membership of the bankrupt in the Chicago Board of Trade.

Hyde v. *Woods*, 94 U. S. 525.
Page v. *Edmunds*, 187 U. S. 596.

Second. None of the petitioners were in fact such adverse claimants at the time of the institution of the bankruptcy proceedings as would entitle them to interpose objection to the jurisdiction of the District Court.

Even though it be conceded that the Trustee did not get possession of the membership of the bankrupt, that fact alone does not defeat the jurisdiction of the District Court as to the petitioner's herein. In order that they may sustain a plea to the jurisdiction it must conclusively appear not only that there are in fact adverse claimants having claims which are real and not colorable, but it must also appear that they were such claimants at the time of the filing of the bankruptcy proceedings. This has been the express holding of this Court, as well as a rule recognized in many cases.

Mueller v. *Nugent*, 184 U. S. 1.
Schweer v. *Brown*, 195 U. S. 171.
In re Bacon, 210 Fed. 129.
In re Ransford, 194 Fed. 658.
In re Davis, 119 Fed. 950.

Was the Board of Trade of the City of Chicago an adverse claimant having a real claim at the time of bankruptcy? The Board does not pretend to have any finan-

cial interest in or claim against such membership. The bankrupt's membership passed to and became the property of the trustee subject to the rules of the Board. How then could the Board be an adverse claimant at the time of the bankruptcy petition. Granting that a dispute as to the interpretation or application of the rules of the Board is a controversy in which the Board is adverse to the trustee, nevertheless, even if that makes the Board an adverse claimant, that controversy did not arise until after and in the course of the bankruptcy proceedings. The Board was making no adverse claims with regard to this membership and as against the bankrupt, either directly or indirectly, at the date of bankruptcy.

The bankrupt had acted absolutely in accordance with the rules of the Board with regard to the posting of an application for transfer and more than ten days had passed at the time of the filing of the bankruptcy petition. Under the very provision of Rule X, Sec. 2 (Rec. 9-10) it was then assumed that the member had no outstanding claims against him. In view of that assumption it is conclusive that the Board of Trade could not have had a claim against the bankrupt at that time.

All other petitioners were creditors of the corporation, Lipsey & Company, and not of the bankrupt individually. That corporation failed in March, 1919. Although the bankrupt posted his application for transfer on May 1, 1919, none of the petitioners herein, with one exception, had filed any objection to the transfer up to the time of bankruptcy, January 24, 1920. The one exception, Bridge & Leonard, had filed a claim but had withdrawn it. Despite the fact that the rules provided that there should be an assumption that there were no objections if notice thereof had not been given within ten days, these petitioners now before the Court permitted nearly

nine (9) months to pass (from May 1, 1919, to January 24, 1920) without action on their part. The petitioners other than Bridge & Leonard filed their objections five days after the bankruptcy petition. It is uncontroverted that on January 24, 1920, the date of the filing of the bankruptcy petition, the bankrupt was a member of the Chicago Board of Trade in good standing and, therefore, his membership was unimpaired in any respect and that no objection to a transfer was then on file.

The petitioner Bridge & Leonard not only had withdrawn the objection to transfer filed prior to the bankruptcy, but took no action of any kind until June, 1921. In the meantime, not only had the petition in bankruptcy been filed but the trustee on his appointment had filed his original petition herein asserting jurisdiction over the membership, and pleas to that jurisdiction had been overruled by the District Court in May, 1921 (Rec. 19). The filing of proceedings for suspension of the bankrupt by said Bridge & Leonard in June, 1921 necessitated the amended and supplemental petition herein. Under these circumstances can it be said that Bridge & Leonard was an adverse claimant on January 24, 1920?

We believe that Rule X, Sec. 2, (Rec. 8) might well be construed to mean that when an application for transfer is posted any objection thereto must be filed within ten days; but even though objections may be filed at any time prior to transfer it cannot be denied under that rule that there is an assumption that there are no claims after the expiration of ten days. On January 24, 1920, the bankrupt, being in good standing and without objections on file to his proposed transfer, had the absolute right under the rules of the Board to consummate a transfer at least if he could find a purchaser. Such purchaser could have taken an assignment of the bankrupt's membership on that day and the presentation thereof upon his election

would have been a full compliance with the requirement of Sec. 1 for a "presentation of an unimpaired or forfeited membership, duly transferred." The right of any member to file an objection more than ten days after the posting of notice, if such right exists, cannot be construed as anything more than a latent lien, which terminated when the title passed to the trustee.

The only right that creditors of a corporation may have is under Rule XXII, Sec. 11 (Rec. 10). Does this rule give to such creditors a right to file objections? It does not specifically so state, but only says that the officer members of such corporation "shall be subject to discipline." Discipline means a deprivation of privileges, and the rules provide for suspension or expulsion of a member. This we take it is discipline. Can the rule be construed to mean more than that? Such discipline can only be the result of charges made and a hearing thereon under Rule IV, Sec. 16 and 17 (Rec. 27). The bankrupt had lost all his privileges when his membership passed to the trustee.

In any event, none of these petitioners claim any right to take this membership or to use it or to sell it. They cannot require its sale by the bankrupt. The Board itself could not dispose thereof for their benefit. They cannot get out of this membership one single penny. On the date of bankruptcy they were not creditors of nor claimants against the bankrupt, but at the very most had only the right to file their charges or objections if they should see fit to do so. Their rights were purely latent in character, having no force until asserted. Surely on the date of bankruptcy they were not in fact adverse claimants.

Counsel devotes a great deal of space in his brief and cites many cases in his discussion of the distinction between "controversies in bankruptcy" and "proceedings

in bankruptcy." We do not deem this question in point, because under the very cases cited there must be not only a lack of possession of the property in the trustee but an adverse claim existing at the time of the bankruptcy proceedings, if the District Court is to be denied jurisdiction. We invite a close examination of all the cases cited by opposing counsel. He particularly relies on *First National Bank* v. *Title & Trust Company,* 198 U. S. 280, but in that case the bankrupt had placed property in a storage warehouse, taking warehouse receipts therefor and had thereupon pledged such receipts. The bankrupt therefore, did not have the actual possession and control of the property in question or of the evidences thereof; namely: the warehouse receipts. Counsel has not cited a single case wherein the jurisdiction of the Bankruptcy Court over property which was in the possession and control of its trustee has ever been denied.

We cannot pass unnoticed certain statements which are made in an attempt to sustain the proposition that the petitioners were adverse claimants. There is no basis for the statement that these petitioners claimed this membership as property. Under the record they neither claim to own it, control it, or have any affirmative lien thereon; but on the contrary, by their brief they deny that it is property. Neither is there any basis for the statements that the trustee is endeavoring to defeat a contract between the bankrupt and the Board of Trade, or defeat any rights in contravention of the charter or rules of the Board of Trade, or that such rules became inactive and are annulled by virtue of the order of the District Court. Neither has the District Court sustained any such contentions. On the contrary, the trustee by his petition and now in this Court asks only for the recognition of his ownership in this property subject to

and in strict accordance with the rules of the Board of Trade. Whatever dispute there may be in this case arises in the course of administration of the bankrupt estate with reference to an interpretation of the rules of the Board.

It is, therefore, submitted that under all of the facts and circumstances of this case, the petitioners are not in fact adverse claimants having any actual and valid claim against this membership and that in any event they were not such adverse claimants at the date of the filing of the bankruptcy petition herein.

Third: Sec. 70, Sub. e, of the Bankruptcy Act, expressly confers jurisdiction on the Bankruptcy Court, and that section is one of the exceptions named in Section 23 b of the Bankruptcy Act.

The petitioners deny the jurisdiction of the District Court under authority of Section 23 b of the Bankruptcy Act. It is asserted, and citations are presented in support thereof, that this section constitutes an exception to the general powers given in the Bankruptcy Act to cause the estates of the bankrupts to be collected and controversies in relation thereto determined; that under said Section 23 b it is necessary for the trustee to file proceedings in the court in which the bankrupt himself might have filed. In support thereof they particularly cite both *Bardes* v. *Hawarden Bank*, 178 U. S. 525 and *Babbitt* v. *Dutcher*, 216 U. S. 102. We call the Court's attention to the fact, however, that subsequent to the decisions of this Court in those cases, Sec. 23 b was amended so that suits for the recovery of property under Sec. 70, Sub. e, were expressly excepted from the requirement thereof. If Sec. 70 e applies to such a situation as is here before the Court, then the Bankruptcy Court did have jurisdiction of these proceedings because such section expressly provides therefor.

Weidhorn v. *Levy*, 253 U. S. 273.

On the date of filing of the bankruptcy petition the bankrupt was a member in good standing and was the owner of the membership in the Chicago Board of Trade. Not only was there no claim on file against him on that day, such as would constitute a lien on the membership or prevent its transfer, but the bankrupt had complied with Rule X, Sec. 2 (Rec. 9) of the Board pertaining to transfer and more than ten days prior thereto had posted a notice of his application for transfer. On that day the bankrupt had the absolute right to transfer, because under the rules themselves it was then to be assumed that there were no claims or objections to such transfer. If other members still had the right to file claims or objections they were in the nature of latent liens.

If on January 24, 1920, this bankrupt member by his own act had made a transfer of his membership, that transfer would have been conclusive. In contemplation of law this bankrupt member did make a transfer of his membership as of the date of the filing of the bankruptcy petition against him. The trustee in bankruptcy took the membership by operation of law. These petitioners had failed to take advantage of those rules of the Board which gave them a right theretofore to perfect their claims against this membership. The bankrupt could have avoided anything which they may have attempted to do subsequent to a transfer by him.

The trustee in bankruptcy takes the membership as property subject to the rules of the Board, but also with the advantage of all the privileges and rights which the bankrupt had pursuant to the rules. The trustee, therefore, had the right under Sec. 70 e to take action for the purpose of avoiding the attempts of the petitioners to fasten a lien of the membership subsequent to the transfer to him. This right in and of itself we submit gave the District Court jurisdiction.

We submit that the Bankruptcy Court had jurisdiction of the petition of the trustee now before the Court, both as to the subject matter thereof and as to the petitioners now before the Court, and that such jurisdiction is conclusively apparent from a consideration of the provisions of the Bankruptcy Act itself, and under the facts of this case. The membership is in the possession and control of the trustee; the petitioners are not adverse claimants upon claims which were adverse at the time of the institution of bankruptcy proceedings; and these attempts by petitioners to fix liens upon this membership subsequent to the bankruptcy is contrary to the rules of the Board itself and can be avoided by the trustee.

THE MERITS.

The merits of this case involve a determination of the question whether the trustee took this membership of the bankrupt in the Chicago Board of Trade as an asset of the estate; and if so, whether under the rules of the Board and the conditions imposed thereby, the trustee takes the membership free and clear of any claims. Opposing counsel is entirely in error when he says that the decisions of the Circuit Court of Appeals, and the District Court, were made in disregard of all rules of the Board, and contrary to the decisions of this Court. On the other hand, both of the lower courts acted under the authority of the several opinions of this Court establishing the law applicable hereto, and gave full consideration to those rules.

The claims of the petitioners were overruled not in disregard of the rules, but because upon a consideration and interpretation of those rules, it was determined that the bankrupt had so complied therewith, that on the day

of the filing of the bankruptcy petition he had the absolute right to transfer his membership free and clear of any claims whatsoever. It was held as a necessary consequence therefore, that the membership passed to the trustee with all the rights, privileges and advantages as to transfer which the bankrupt himself possessed.

Under Section 70 of the Bankruptcy Act all property which the bankrupt might have transferred is declared to vest in the trustee, and therefore, it becomes an asset of the bankruptcy estate. It makes no difference what the condition or value of such property may be; the only criterion is its transferability. The fact that the property could not be taken by judicial process in the state of its situs is wholly immaterial; so likewise the fact that its transfer by the bankrupt is subject to extremely onerous conditions. If a transfer can be effected by the bankrupt under any conditions the requirements of the Bankruptcy Act are satisfied; the conditions only affect the value of the asset.

In the case of such associations as stock or grain exchanges it is usual that conditions are imposed both upon becoming a member and also upon transferring a membership. Nevertheless the right of transfer in some manner is generally recognized by such association. The Board of Trade of the City of Chicago by its rules gives to members the affirmative right to transfer membership subject only to the conditions prescribed. A membership in that Board of Trade has heretofore been held as property vesting as an asset of the bankrupt estate.

Board of Trade v. *Weston*, 243 Fed. 332. (C. C. A. 7th Cir.)

There has been no material changes in the rules of the Board since that case as will appear from a comparison of the record here and that opinion. The use of certifi-

cates as an evidence of the membership has been discontinued but this can in no way affect the qualities of the membership as to transferability or otherwise. The membership of the bankrupt Wilson F. Henderson was and is property, the title to which has vested in his trustee. That title was transferred by operation of law and is an asset in this bankruptcy estate regardless of the conditions which affect its value.

Page v. *Edmunds*, 187 U. S. 596.
Hyde v. *Woods*, 94 U. S. 523.
In re Hoey, 290 Fed. 116.
In re Stringer, 253 Fed. 352.
O'Dell v. *Boyden*, 150 Fed. 731.
In re Hurlbutt Hatch & Co., 135 Fed. 504.
In re Gaylord, 111 Fed. 717.

See also:

Rogers v. *Hennepin County*, 240 U. S. 184.
Citizens Nat. Bk. (Anderson) v. *Durr*, 257 U. S. 99.

In support of the proposition that a membership is not an asset counsel has referred to the cases of *Bartley* v. *Smith*, 107 Ill. 349, and *People* v. *Board of Trade*, 80 Ill. 134. An examination of those cases will satisfy that they have no bearing on the question at issue. It is not held by the Illinois Supreme Court that such a membership is not property but that it is not property subject to judicial process under the statutes of Illinois. There is a vital distinction which that Court has recognized in *Weaver* v. *Fisher*, 110 Ill. 146.

The question in any event is not one of statutory interpretation but a definition of property and the Federal Courts are not bound by the Illinois decisions.

Page v. *Edmunds*, 187 U. S. 601.
In re Page, 107 Fed. 89.

The law recognizes two distinct rights accruing to a member in such an association; one the right to do business on the exchange, and this is personal; the other the property right, which passes to and vests in the trustee. When the trustee sells, the buyer must be accepted by the Board; but whether the trustee can find such a buyer does not affect his right to sell the membership as property. Before the membership, as property, and the money value thereof can be wholly lost to the trustee express provision in the rules for any such forfeiture must be found.

In re Gaylord, 111 Fed. 717.

The question of whether the membership has great or little value is not material. The trustee takes title to all property with the right to reject the worthless.

Sessions v. *Romadka*, 145 U. S. 29.
Board of Trade v. *Weston*, 243 Fed. 332.
In re Frazin v. *Oppenheim*, 174 Fed. 713.

A species of property which emphasizes the rights of a trustee here under discussion is the ordinary form of lease. Such an instrument involves an obligation which may entirely wipe out any possible value to the lessee; but on the other hand, it is property and may have great value. Furthermore, it is usual for a lease to contain a covenant prohibiting the lessee from subletting or assigning. Nevertheless, it is held that such covenant alone will not prevent the lessee's title to such lease from vesting in the trustee, and that such vesting will not constitute a violation of the lease.

Gazlay v. *Williams*, 210 U. S. 41.
In re Frazin v. *Oppenheim*, 174 Fed. 713.
In re Adams, 134 Fed. 142.

So also the stipulation in a contract against an assignment thereof has been recognized as not preventing an assignment by operation of law; it is at the option of the trustee whether or not he will accept and perform.

Central Trust Co. v. *Chicago Auditorium Asso.* 240 U. S. 581.

It cannot be ascertained until the trustee offers the membership for sale whether or not it can be sold. It is immaterial what claims or contingencies there may be affecting the property or its value. It is for the trustee or parties in interest with him to determine what shall be done. It does not lie in the mouth of lienholders to demand the property or deny the equity of a trustee therein because such property or the equity seem of no value. That involves the wisdom of the trustee's actions and not his right or title in and to the property.

Counsel for petitioners in his argument upon this question and indeed throughout his brief predicate their position upon one statement for which there is no foundation in the rules of the Board. It is repeatedly stated by counsel that a membership cannot be transferred unless the creditors of the members consent, and that the Board of Directors is powerless to permit a transfer. There is absolutely no requirement for a consent; neither has the Board of Directors anything to do with a transfer unless it be when an objection thereto is filed. The rules relating to transfers are Sections 1 and 2, Rule X (Rec. 8).

When an application for transfer of a membership is posted upon the Bulletin of the exchange by a member, objections to such transfer may be made. That requirement is very far from requiring the consent of creditors. On the contrary if the notice is posted for at least ten days and no protests are made the rules provide "it shall be assumed the member has no outstanding claims

against him," and the member would be then free to transfer without regard to what claims might be outstanding against him.

While it is true that Rule X, Section 2, requires transfer to one eligible to membership under Section 1, this does not affect the rights of the trustee to take this kind of property. He takes only subject to the rules for the purpose of sale and not as an ordinary member.

It will be found that similar conditions as to transfer existed in all those cases cited above to the effect that such a membership is property.

We do not dispute the proposition that the trustee takes the membership of the bankrupt as property subject to all of the rules of the Board of Trade. The petition in this case expressly prays only that the trustee's rights shall be recognized under the rules of the Board, and the order of the Court here under review expressly recognizes such rules. The statement of counsel that the District Court held that as soon as the bankruptcy proceedings were instituted all of the rules of the Board of Trade became inoperative is entirely without foundation.

It is true that there was submitted for consideration to the District Court the interpretation or application of certain of those rules; but the claim made in behalf of the trustee that he has taken and holds this membership free and clear of any claims or liens of the petitioners or others is based upon the contention that such parties have no right as against the trustee under a proper interpretation of their own rules.

It is a familiar principle for which authority is hardly necessary that an instrument is always to be construed case of doubt as against the maker thereof. The rules of the Board of Trade while recognized and respected by the Bankruptcy Court will certainly not be so con-

strued as to take away all value from the property held by the trustee, unless such rules unquestionably require that course.

Rule X, Section 2, (Rec. 9), expressly gives to a member the absolute right to transfer his membership to any person eligible for membership. This is an affirmative privilege in favor of a member even though there are conditions to be complied with. Counsel for petitioners has repeatedly here suggested that there is a contract between the bankrupt member and the Board of Trade, which has been violated and disregarded by the order of the District Court, under which contract there were certain obligations on the part of such member which Henderson has failed to comply with. Counsel, however, wholly ignores the fact that a contract is mutual and that the member has privileges as well as obligations. That privilege with which we are concerned deals with his right to sell and transfer his membership.

If he complies with the conditions imposed by the rules then there is no limitation and no power on the part of the Board under its rules to prevent his making a sale and transfer. We call to the attention of the Court that the conditions of becoming a member are contained in Section 1 of Rule X, (Rec. 9), whereas the privilege of selling the membership is in a distinct section, namely, Section 2 of Rule X, (Rec. 9). The two sections are not made interdependent. It is true that Section 2 requires the transfer to one eligible for membership and who may be accepted as provided by Section 1. It is also true that Section 1 contemplates an accepted applicant presenting a membership which has been *duly transferred* from a member.

We would ask the Court to examine these two sections with reference to these conditions. It will be observed that Section 1 provides for the making of an application

for membership, an examination of the applicant and his election by the Board of Directors. When those things have been done and the applicant has been duly elected he consummates the transaction aside from signing an agreement to abide with the rules of the Board, in one of two ways, namely, by paying an initiation fee as prescribed, or "by the presentation of an unimpaired or unforfeited membership, duly transferred." In other words, this section expressly contemplates that a membership presented by such applicant should be "duly transferred." It of course cannot be so transferred unless the former member had the power to make such transfer; in other words, he must have complied with the rules respecting transfer.

Section 2 of Rule X, (Rec. 9), gives the right of transfer subject to conditions among which is the following: that a member shall have against him "no outstanding, unadjusted or unsettled claims or contracts held by members of this Association, and said membership is not in any way impaired or forfeited." This section, however, provides how the existence of any such claims, etc., may be determined. The rule says "Prior to the transfer of any membership, application for such transfer shall be posted upon the bulletin of the exchange for at least ten days, when if no objection is made, *it shall be assumed the member has no outstanding claims against him.*"

The language of this Section 2 cannot be read to require that a member desiring to dispose of a membership must first find one who has been approved and accepted for membership. On the contrary, the rule says that every member shall be entitled to transfer to any person eligible to membership. The fact is therefore that a member proceeds to post his application for transfer upon the bulletin of the exchange when he desires

to sell. When he finds a qualified purchaser he makes the sale, assuming that no objections have been filed as result of his notice of application. The other members are given ten days to make objection, but after that time if there are none on file, the member is free to make the transfer at any time.

Whether or not Section 2 of Rule X shall be read to mean that members shall have only ten days to file their objections or whether the members may file their objections at any time prior to the transfer is immaterial in this case. We believe the former interpretation would be proper, but it is not necessary to the determination of this case. If ten days have actually passed and no objections are on file then in the language of the rule, "It shall be assumed" that there is no objection, and the member is therefore free to make the transfer on any day that he can find a purchaser, at least, so long as there are no objections.

From this standpoint we call attention to the facts in this case. The bankrupt was a member of the Board of Trade and filed notice of his application for transfer on May 1, 1919. Within ten days certain objections were filed, but all of such objections were disposed of and withdrawn not later than December, 1919. On the 24th day of January, 1920, the bankrupt was still a member and on that day, as is admitted by the petitioners, he was in good standing upon said Board. In other words, on that day there were no objections on file to prevent a transfer by him.

It would have been entirely proper therefore for Wilson F. Henderson to have sold, assigned and transferred his membership on January 24, 1920; and any person who had been accepted as a member would have been acting in full compliance with the rules of the Board if he had presented proof that the membership of Wilson F. Henderson had been duly transferred to him.

On the day in question, January 24, 1920, an involuntary petition was filed against the said member, Wilson F. Henderson and the question now before the Court is to determine what title the trustee took. It is the contention of the trustee that he took all that the bankrupt could have then conveyed, and that inasmuch as the bankrupt had complied with the rules so as to enable him to transfer his membership free and clear of any claims or liens whatsoever, therefore the trustee has taken such membership as a transfer by operation of law, free and clear of any and all claims or liens.

It is a familiar rule that the rights of the trustee date from the filing of the petition in bankruptcy. From that date the case is *lis pendens* and all property of the bankrupt which was in his possession is therefore in *cusdodia legis*. In the case of *Mueller* v. *Nugent*, 184 U. S. 1, this Court held:

> "It is as true of the present law as it was that of 1867, that the filing of the petition is a caveat to all the world and in effect an attachment and injunction (*International Bank* v. *Sherman*, 101 U. S. 407, 25 L. Ed. 867) and on adjudication, title to the bankrupt's property became vested in the trustee (Sections 70, 21c) with actual or constructive possession and placed in the custody of the Bankruptcy Court."

The opinion in that case discusses the proposition at some length and has been followed in numerous cases since that time.

Acme Harvester Co. v. *Bergman Lbr. Co.*, 222 U. S. 300.

Weinger Bergman & Co., 126 Fed. 875.

Upon the question herein involved as to whether or not the trustee took the membership free and clear of claims, we quote the opinion in *Page* v. *Edmunds*, 187

U. S. 596 in which the status of such a membership
property was reaffirmed. The Court there stated:

> "The trustee of the bankrupt's estate is the ba
> rupt's assignee and we only repeat the statute wh
> we say that the trustee is vested with whatever t
> bankrupt could have conveyed."

The case of *In re Hurlbutt, Hatch Co.*, 135 Fed. 5
was also a case which involved a membership on the sto
exchange and the Court there stated upon this questio

> "There is no merit in the contention that the
> der to execute said request was equivalent to a
> signation of said personal membership in the sto
> exchange. The bankrupt lost his membership wh
> the essential element thereof—the seat in the sto
> exchange—vested in the trustee. He was 'fully a
> completely divested of his property in the seat
> membership.' *Platt* v. *Jones*, 96 N. Y. 24. The ord
> of Court merely effectuates the provision empow
> ing it to cause the estates of bankrupts to be c
> lected, by requiring this bankrupt to obey the p
> visions for the execution of the papers necessa
> for such purpose."

The law upon this question was reviewed in the case
Bailey v. *Baker Ice Machine Company*, 239 U. S. 2
when the Court said:

> "When not otherwise specially provided t
> rights, remedies and powers of the trustee are
> termined with reference to the conditions existi
> when the petition is filed. It is then that the ba
> ruptcy proceeding is initiated, and the hands of t
> bankrupt and his creditors are stayed, and that
> estate passes actually or potentially into the co
> trol of the bankruptcy court."

It is therefore apparent that the membership of t
bankrupt passed to the trustee and vested in him
operation of the law. This was a legal transfer and t
trustee took all that the bankrupt could have convey

with all of the privileges which inured to him as a member under the rules of the Board. While the trustee takes subject to the rules, if the bankrupt has complied with the conditions imposed by the rules there is certainly no obligation that the trustee shall again comply with those same rules. It has not been asserted that the trustee must post notice nor will it be. The bankrupt did that once, and that is enough. All creditors had an opporunity to come in and file their objection and not having done so they cannot now complain if the bankrupt has made a transfer by his own act or the membership has been transferred by operation of law.

The rights of the trustee are not alone, however the rights which the bankrupt had and which passed by operation of law from him. Section 47 a-2 of the Bankruptcy Act as amended in 1910 gives certain additional rights. That section relates not to what property passes to the trustee (Section 70 determines that), but rather to the powers or rights to be exercised and enjoyed by the trustee over the property of the bankrupt. That portion of Section 47 a-2 here in point is as follows:

> "And such trustee, as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also, as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied."

The object of this part of the Act quite apparently was to overcome the effect of unrecorded liens which without said provision would be good against the bankrupt and hence would be good against the trustee. It is, therefore, now recognized that a trustee has two rights

as to property in his custody, the rights of the bankrupt and of a creditor holding some lien.

In re Seward Dredging Co., 242 Fed. 225.

The application of this section to the case at bar is clear. Under Rule X, Section 2 of the Board rules, creditors or claimants might file their protests against a transfer, but if ten days passed after notice without protests then "it shall be assumed" that there are none. The member had given the notice and on the date of the filing of the bankruptcy petition almost nine months afterward no protests were on file. Section 47 a-2 applies as of the date of the petition.

Bailey v. *Baker Ice Machine Co.*, 239 U. S. 268.

Fairbanks Shovel Co. v. *Wills*, 240 U. S. 642.

These creditors of Lipsey & Co., even granting they had the right to file protests, were under obligation to file them in due course. They knew that if protests were not filed within ten days the member could sell, but they did not file for nearly nine months nor until after the petition in bankruptcy was filed. At most they had, at that time, latent liens. It would seem that Section 47 a-2 was designed for exactly such a condition. Many cases construing that section seem clearly applicable.

Fuller v. *Atlanta Nat. Bank*, 254 Fed. 278.

In re Collins, 235 Fed. 937, 942.

Mass B. & Ins. Co. v. *Kemper*, 220 Fed. 847, 851.

In re Rosenthal, 238 Fed. 597.

In re Social Circle Cotton Mills, 213 Fed. 994.

In re Smith, 198 Fed. 876.

The trustee's rights exist as of the date of the bankruptcy petition January 24, 1920, and those rights are those of a lien holder, inasmuch as the property vested in and came into the possession of the trustee as of that day. Whatever potential claims or liens might be outstanding which had not been perfected by the filing of protests following the posting of Henderson's application for transfer became void as against the trustee. Whether the trustee takes the title of the bankrupt with the privileges and rights of the bankrupt existing as of January 24, 1920, or whether he takes as a lien creditor as of that date, makes little difference in the ultimate result in this case.

The rules of the Board having been complied with, to permit a transfer of the membership, and all creditors or potential claimants having been given sufficient opportunity to file their protests, and the member whose membership was proposed to be sold being in good standing without protests against his transfer of membership on the date of bankruptcy, therefore the title in and to this membership is good in the trustee free and clear of any claims whatsoever.

The petitioners in this case who filed protests on January 29, 1920, against the transfer of the bankrupt's membership were creditors of Lipsey & Co., a corporation, but not of the bankrupt personally. They therefore depend for their rights upon the provisions of Section 11 of Rule XXII of the Board. (Rec. 10.) Under this rule it is provided that where a corporation defaults in its obligations, the officers thereof who are members of the Board shall be subject to be disciplined. Provisions for any such discipline are found in Sections 7, 9, 16, 17 of Rule IV (Rec. 26-27) involving either suspension or expulsion.

The right of these petitioners directly to prevent a transfer, if there was any such right, must be found in Section 2, Rule X, (Rec. 9) but that rule denies the right of a transfer only under either one of two conditions: One, that a member has outstanding, unadjusted or unsettled claims of contracts, held by members; second, that his membership is impaired or forfeited. There is no pretense that the petitioners, Armour Grain Company, George A. Hellman or J. E. Bennett & Co. had instituted proceedings for the suspension or expulsion of the bankrupt, or that any proceedings are contemplated upon their protests under the provisions of Sections 16 and 17 of Rule IV. Such parties have merely filed protests on the basis of unsettled claims or contracts against Lipsey & Co. It is argued by opposing counsel that this is in accordance with the practice of the Board. While we do not deny but that the membership as property is subject to the rules of the Board nevertheless there must be express provisions in the rules to justify such an impairment thereof as would take all value therefrom.

In re Gaylord, 111 Fed. 717.

It is a familiar rule referred to above that an instrument of any kind in case of doubt is to be construed most strongly against the person who prepared it and this principle certainly applies here. As between the trustee and the petitioners the rules of the Board are to be strictly construed. Those rules (Sec. 2, Rule X; Rec. 9) have made a distinction in regard to transfers of membership between outstanding claims and an impairment or forfeiture. The bankruptcy court will observe the same distinction, and will not recognize the provisions of Section 11, Rule XXII, (Rec. 10) involving corporations as giving any greater rights than are clearly expressed therein. Corporation creditors may

have the officers of such corporation disciplined in a proper case, but there is no basis in the rules for making the claims against the corporation personal obligations of such officer.

Long after filing of the trustee's original petition in the District Court the petitioner, Bridge & Leonard filed proceedings for the suspension or expulsion of Henderson. But this petitioner, likewise a creditor of Lipsey & Co., filed a protest against the transfer of the membership within ten days after notice for transfer was posted on May 1, 1919. They thereby recognized the requirement of the rules. Afterward, and before bankruptcy, they withdrew the protest, as they had a right to do, thereby giving to the bankrupt the unquestioned right to make a transfer in disregard of any claim they might have. We cannot conceive what right under the rule of the Board or in law or in equity will justify reviving their claim, and in another form, a year and a half after bankruptcy proceedings were instituted, and a year after the trustee's petition was filed. The trustee's right and title have intervened and the bankrupt has ceased to be a member. (See argument and citations above.) He is no longer subject to discipline, the transfer of membership to the trustee carrying with it the termination of all such provisions under the circumstances of this case.

Counsel for petitioners in his argument on the merits insists that the lower court erred in three respects. We shall refer to these briefly in the order presented.

First, it is said that the Court held that the right of the Board of Trade to suspend a member or refuse to transfer a membership ceased upon the appointment of a trustee in bankruptcy. Neither the District or Circuit Courts so held. On the contrary it was determined and held that under the rules of the Board the bank-

rupt had the right to transfer his membership free and clear of all claims, since these petitioners after due notice had failed to object thereto. This transfer was made to the trustee under those conditions and therefore the petitioners had lost all rights as against the trustee.

Counsel's argument on the proposition is that the title to the membership did not pass to the trustee but only a right to elect whether to take or not. The case of *Sparhawk* v. *Yerkes,* 142 U. S. 1 cited in support of such position does not sustain it. Counsel is not able to cite a single case which does sustain this contention. We have herein above cited several cases to the effect that title to all the bankrupt's property passes to the trustee subject to his right to reject the worthless or burdensome. Even if election were necessary it is quite apparent that the trustee in this case has elected to take this membership.

Counsel's second proposition is that the membership is not an asset in bankruptcy. No authority is presented other than the argument that the petitioners claims prevent a transfer and the amount of those claims exceed the saleable value. The value of a thing does not determine whether it is an asset. We are confident that under the authorities and reasoning hereinabove presented, there can be no question but that the membership of the bankrupt in the Chicago Board of Trade passed to and became an asset of the bankrupt estate.

The third proposition presented is in substance that there is no absolute right in a member to transfer his membership but that the transfer is made by the board of directors. Council's statements of what is in the rules of the board are not accurate in many instances. He refers to Rule X Sec. 1 and quotes from Section 2, Rule X as though it were a part of said Section 1; but

as to exactly the provisions of those sections we refer to the record. (Rec. 9.) The real dispute in this case as between the parties before the Court arises from the desire of petitioners to interpret and apply the rules of the Board of Trade solely for the benefit of members of the Board to the total exclusion of the rights of the trustee in bankruptcy. We have discussed those rules and leave to the Court their proper interpretation.

This case is now before this Court because of the granting of a petition for certiorari. That petition averred that the order of the District Court under the facts before the Court, and the opinion of the Circuit Court of Appeals, were in direct conflict with the law as established by certain decisions of this Court. Unfortunately, counsel for respondent were not admitted to practice in the Supreme Court at that time and hence could not take issue with such averrments. We are confident that upon a full examination of those decisions as herein discussed, it will become clearly apparent that the writ was inadvertently issued and the petition might properly have been dismissed. Counsel for respondent are content however that the case be decided upon the merits.

In conclusion, we submit to this Court that the membership of the bankrupt in the Board of Trade of the City of Chicago is property subject to the jurisdiction of the Bankruptcy Court as an asset of the bankrupt estate; that such membership is in the possession of the trustee and the bankruptcy court had full power to adjudicate and by its order did settle all questions and conflicting claims relating thereto; that the membership is not and never has been in the possession of any of the petitioners herein and further, that none of the petitioners had adverse claims against said membership on the date of the bankruptcy petition. Therefore, it con-

clusively follows that the District Court had jurisdiction of the trustee's petition in this case. We further submit that the trustee's title to the property in question, under the circumstances of this case and the law applicable thereto, is not subject to any claims or liens in favor of any of the petitioners herein. The order of the District Court is therefore proper and must be affirmed.

Respectfully submitted,

ROBERT N. ERSKINE,
F. WILLIAM KRAFT,
Counsel for Respondent.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1923.

BOARD OF TRADE OF THE CITY OF CHICAGO ET AL. *v.* JOHNSON, TRUSTEE IN BANKRUPTCY OF HENDERSON.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 90. Argued November 26, 1923.—Decided February 18, 1924.

1. Decisions of state courts defining property rights do not bind the federal courts in bankruptcy, when contrary to the policy and proper construction of the Bankruptcy Act. P. 10.
2. A membership in the Chicago Board of Trade, which, under the rules of the association, the owner may sell to any person eligible to membership approved by the board of directors, subject to the right of his co-members to prevent the sale or transfer until he satisfies his debts to them, is incorporeal property, the possession and control of which, for the purpose of disposition in accordance with the rules, pass to the member's trustee in bankruptcy, under § 70a (5) of the Bankruptcy Act. Pp. 8, 12.
3. The right of the trustee in bankruptcy to have the membership sold, as against the Board and members claiming the right to prevent transfer until debts owed them by the bankrupt are paid —may be determined by the District Court in a summary proceeding. P. 11.
4. Where the rules provided that a membership in an exchange might be transferred with the approval of the directors, if there were no unsettled claims upon the owner, and if the membership was not in any way impaired or forfeited, and directed that, prior

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to transfer, the application therefor should be posted 10 days, when, in the absence of objection, "it shall be assumed the member has no outstanding claims against him," *held* that failure of creditor members to object to a proposed transfer, during the 10 days, or withdrawal of objections made, did not estop them from objecting soon after the owner of the membership went into bankruptcy, the directors not having approved the transfer meanwhile. P. 14.

5. Members of an exchange having claims under contract made with a co-member acting as agent of a corporation, *held* entitled under the rules of the exchange, to object to a transfer of the membership by the owner's trustee in bankruptcy until their claims against the corporation were satisfied. P. 15.

6. The right of a member of an exchange under its rules to prevent by objection a transfer of the seat of another member, until satisfaction of a debt owed the one by the other, *held* in the nature of a lien upon the membership at its creation assertable after the membership passed to the debtor's trustee in bankruptcy. P. 15.

283 Fed. 374, reversed.

CERTIORARI to a decree of the Circuit Court of Appeals, which affirmed, upon petition to review, a decree of the District Court in bankruptcy, adjudging that a seat of a member in the Chicago Board of Trade was property passing to his trustee in bankruptcy free of all claims of other members, and ordering that it be held for transfer and sale for the benefit of the general creditors.

Mr. Henry S. Robbins for petitioners.

Jurisdiction in the District Court could not be sustained within the exception in § 23b of the Bankruptcy Act, which permits suits by the trustee in the courts where the bankrupt might have brought them. The ground of diverse citizenship was not available.

The Board and its co-petitioners were adverse claimants. As to them, it was a "controversy in bankruptcy." The membership was not in possession of the trustee. There was no jurisdiction to adjudicate summarily. *Smith* v. *Mason*, 14 Wall. 419; *Marshall* v. *Knox*, 16

Wall. 551; *First National Bank* v. *Title & Trust Co.*, 198 U. S. 280; *Bardes* v. *Hawarden Bank*, 178 U. S. 524; *Mueller* v. *Nugent*, 184 U. S. 1; *Babbitt* v. *Dutcher*, 216 U. S. 102; *Bryan* v. *Bernheimer*, 181 U. S. 188; *Galbraith* v. *Vallely*, 256 U. S. 46; *Louisville Trust Co.* v. *Comingor*, 184 U. S. 18; *Martin* v. *Oliver*, 260 Fed. 89; *In re Bacon*, 210 Fed. 129; *In re Cotton*, 209 Fed. 124; *In re McCrum*, 214 Fed. 207; *In re Rathman*, 183 Fed. 913; *O'Dell* v. *Boyden*, 150 Fed. 731.

The court below erred, on the merits: (1) In holding that the right of the Board of Trade under its rules to suspend a member, and to refuse to transfer his membership, until his debts to other members were paid, ceased upon the appointment of a trustee in bankruptcy, even as respects debts which had accrued before the bankruptcy proceedings; (2) in holding that this membership was an asset in bankruptcy. *Sparhawk* v. *Yerkes*, 142 U. S. 1; *Hyde* v. *Woods*, 94 U. S. 525; *Page* v. *Edmunds*, 187 U. S. 601; *Barclay* v. *Smith*, 107 Ill. 349; *In re Gregory*, 174 Fed. 629; *People* v. *Board of Trade*, 80 Ill. 134.

Mr. Robert N. Erskine, with whom *Mr. F. William Kraft* was on the brief, for respondent.

The property was in the possession and control of the bankruptcy court and its trustee.

The jurisdiction of a District Court to deal with it by summary proceedings is plain, including the right to settle all adverse claims. *Whitney* v. *Wenman*, 198 U. S. 539; *In re Hoey*, 290 Fed. 116; *In re Gottlieb & Co.*, 245 Fed. 139; *Orinoco Iron Co.* v. *Metzel*, 230 Fed. 40; *In re Wegman Piano Co.*, 228 Fed. 60; *O'Dell* v. *Boyden*, 150 Fed. 731; I Collier, Bankruptcy, 12th ed., pp. 541–544.

The contention that under the Board of Trade rules no person can be a member unless accepted by the Board, and therefore neither title nor possession of the bank-

rupt membership can pass to the trustee, has been expressly overruled in *Board of Trade* v. *Weston*, 243 Fed. 332, under the authority of *Hyde* v. *Woods*, 94 U. S. 523, and *Page* v. *Edmunds*, 187 U. S. 596.

A membership in a Board of Trade passes to the custody and possession of the trustee. *O'Dell* v. *Boyden*, 150 Fed. 731; *In re Hoey*, 290 Fed. 116.

The petitioners were not such adverse claimants at the time of the institution of the bankruptcy proceedings as would entitle them to interpose objection to the jurisdiction of the District Court. *Mueller* v. *Nugent*, 184 U. S. 1; *Schweer* v. *Brown*, 195 U. S. 171; *In re Bacon*, 210 Fed. 129; *In re Ransford*, 194 Fed. 658; *In re Davis*, 119 Fed. 950.

Section 70e of the Bankruptcy Act expressly confers jurisdiction on the bankruptcy court, and that section is one of the exceptions named in § 23b. *Weidhorn* v. *Levy*, 253 U. S. 273.

The trustee takes the membership as property subject to the rules of the Board, but also with the advantage of all the privileges and rights which the bankrupt had pursuant to the rules. He took it free and clear of any claims.

Title was transferred by operation of law and is an asset in this bankruptcy estate, regardless of the conditions which affect its value. *Page* v. *Edmunds*, 187 U. S. 596; *Hyde* v. *Woods*, 94 U. S. 523; *In re Hoey*, 290 Fed. 116; *In re Stringer*, 253 Fed. 352; *O'Dell* v. *Boyden*, 150 Fed. 731; *In re Hurlbutt, Hatch & Co.*, 135 Fed. 504; *In re Gaylord*, 111 Fed. 717; *Rogers* v. *Hennepin County*, 240 U. S. 184; *Citizens Natl. Bank* v. *Durr*, 257 U. S. 99.

The cases of *Barclay* v. *Smith*, 107 Ill. 349, and *People* v. *Board of Trade*, 80 Ill. 134, do not hold that such a membership is not property, but that it is not property subject to judicial process under the statutes of Illinois. Cf. *Weaver* v. *Fisher*, 110 Ill. 146.

The question, in any event, is not one of statutory interpretation but a definition of property; and the federal courts are not bound by the Illinois decisions. *Page* v. *Edmunds,* 187 U. S. 601; *In re Page,* 107 Fed. 89; *In re Gaylord,* 111 Fed. 717; *Sessions* v. *Romadka,* 145 U. S. 29; *Board of Trade* v. *Weston,* 243 Fed. 332; *Frazin* v. *Oppenheim,* 174 Fed. 713. Cf. *Gazlay* v. *Williams,* 210 U. S. 41; *In re Adams,* 134 Fed. 142; *Central Trust Co.* v. *Chicago Auditorium Assn.,* 240 U. S. 581.

If the trustee complies with the conditions imposed by the rules, there is no limitation, and no power on the part of the Board, to prevent his making a sale and transfer.

Objections to the bankrupt's application to transfer were all disposed of and withdrawn before the petition in bankruptcy was filed.

The rights of the trustee date from the filing of the petition in bankruptcy. *Mueller* v. *Nugent,* 184 U. S. 1; *Acme Harvester Co.* v. *Beekman Lumber Co.,* 222 U. S. 300; *In re Weinger, Bergman & Co.,* 126 Fed. 875; *Page* v. *Edmunds,* 187 U. S. 596; *In re Hurlbutt, Hatch & Co.,* 135 Fed. 504; *Bailey* v. *Baker Ice Machine Co.,* 229 U. S. 268. Creditors can not now complain.

Under § 47 a–2 of the Bankruptcy Act, as amended in 1910, the trustee had the rights of a creditor holding a lien. *In re Seward Dredging Co.,* 242 Fed. 225.

These creditors of the corporation, even granting they had the right to file protests, were under obligation to file them in due course. They knew that if protests were not filed within ten days the member could sell, but they did not file for nearly nine months nor until after the petition in bankruptcy was filed.

There must be express provisions in the rules to justify an impairment of a membership depriving it of all value. *In re Gaylord,* 111 Fed. 717.

There is no basis in the rules for making claims against a corporation personal obligations of its officer holding a membership.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

We have brought this cause before us by certiorari to review the action of the Circuit Court of Appeals of the Seventh Circuit in affirming, upon petition to review, a decree of the District Court for the Northern District of Illinois, in a summary proceeding dealing with the membership of a bankrupt in the Chicago Board of Trade. The District Court, finding that the membership was property and under the rules of the Board passed to the trustee in bankruptcy free of all claims of the members, ordered that it be held for transfer and sale for the benefit of the general creditors.

The case presents two questions. First—Had the District Court jurisdiction to deal with the case by summary proceedings?

Second—If the District Court had such jurisdiction, was its decree right upon the merits?

The petition and amendment of the trustee asked that the Board of Trade and certain members be required to show cause why the trustee's right to the membership of the bankrupt should not be recognized by the Board of Trade, so as to permit its transfer and sale. Pleas to the jurisdiction, with special appearances, were filed by the respondents, alleging that the membership was not property, or capable of being treated as an asset of the bankrupt, that transfer of it had been duly objected to by respondents as members, and that they had adverse claims creating a controversy which the District Court, under paragraphs a and b of § 23, of the bankrupt law, was denied jurisdiction to hear. The pleas were overruled. Reserving the question of jurisdiction, the Board of Trade filed an answer, which the other respondents adopted. The cause was heard upon the petition, its amendment, and the answer, which disclosed the following:

Wilson F. Henderson, the bankrupt, a citizen of Chicago, was admitted to membership in the Board of Trade in 1899, and for many months prior to March 1, 1919, was president and one of the principal stockholders in a corporation known as Lipsey and Company, and actively engaged in making contracts on its behalf for present and future delivery of grain on the Board of Trade. In March, 1919, Lipsey and Company became insolvent and ceased to transact business, being then indebted to thirty or more members of the Exchange on its contracts in an aggregate amount of more than $60,000. A corporation is not admitted to membership of the Board, but under the rules it may do business on the Exchange if two of its executive officers, substantial stockholders, are members in good standing and give its name as principal in their contracts. The rules further provide that, if the corporation is accepted as a party to a contract and fails to comply with any of its obligations under the rules, its officers, as members, are subject to the same discipline as if they had failed to comply with an obligation of their own.

Any male person of good character and credit and of legal age, after his name has been duly posted for ten days, may be admitted to membership in the Board of Trade by ten votes of the Board of Directors, provided that three votes are not cast against him and that he pays an initiation fee of $25,000, or presents "an unimpaired or unforfeited membership, duly transferred," and signs "an agreement to abide by the Rules, Regulations and By-Laws of the Association." The rules further provide that a member, if he has paid all assessments and has no outstanding claims held against him by members, and the membership is not in any way impaired or forfeited, may, upon payment of a fee of $250, transfer his membership to any person eligible to membership approved by the Board, after ten days posting, both of the proposed transfer and of the name of substitute.

No rule exists giving to the Board of Trade or its members the right to compel sale or other disposition of memberships to pay debts. The only right of one member against another, in securing payment of an obligation, is to prevent the transfer of the membership of the debtor member by filing objection to such transfer with the Directors.

The membership of Henderson was worth $10,500 on January 24, 1920, when the petition in bankruptcy was filed against him. All assessments then due had been paid and the membership was not in any way impaired and forfeited. On May 1, 1919, Henderson had posted on the bulletin of the Exchange a notice and application for a transfer of his membership. Within ten days, two objections were filed, one of them on account of a debt due from Lipsey and Company. The objections were withdrawn, however, in December, 1919. On January 29, 1920, however, five days after the petition in bankruptcy was filed, members, creditors of Lipsey and Company on its defaulted contracts signed by Henderson, lodged with the Directors objections to the transfer. These objectors were respondents in the District Court and are petitioners here.

Under par. a, § 70 of the bankrupt law of July 1, 1898, c. 541, 30 Stat. 565, the trustee takes the title of the bankrupt (3) to "powers which he might have exercised for his own benefit," and (5) to "property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him." Petitioners insist that the membership is not property within (5). The Supreme Court of Illinois, from which State this Board of Trade derives its charter, has held, in *Barclay* v. *Smith*, 107 Ill., 349, that the membership is not property or subject to judicial sale, basing its conclusion on the ground that it can not be acquired except upon a vote of ten Di-

rectors, and can not be transferred to another unless the transfer is approved by the same vote, and that it can not be subjected to the payment of debts of the holder by legal proceedings. It is not possible to reconcile *Barclay* v. *Smith* with the decisions of this Court. In *Hyde* v. *Woods*, 94 U. S. 523, the bankrupt was a member of the San Francisco Stock and Exchange Board, a voluntary association with an elective membership, and with a right in each member to sell his seat subject to an election, by the Directors, of the vendee as a member. This Court held the membership to be an incorporeal right and property which would pass to the trustee of the bankrupt, subject to the rules of the Board, which required first the payment of all debts due to the members. In *Sparhawk* v. *Yerkes*, 142 U. S. 1, the conclusion in *Hyde* v. *Woods* was reaffirmed in respect of seats in the Stock Exchanges of New York and Philadelphia, which were then voluntary unincorporated associations, with the same provision as to membership and preference for the debts of member creditors. In *Page* v. *Edmunds*, 187 U. S. 596, the question was whether a seat of a bankrupt in the Philadelphia Stock Exchange was property passing to the trustee under subdivision 5 of § 70 of the Bankrupt Act. In that association, no member could sell his seat if he had unsettled claims on the Exchange. In case of insolvency, the seat could be sold, and the proceeds distributed to the member creditors. The Supreme Court of Pennsylvania had held, just as in this case the Supreme Court of Illinois has held, that such membership was not property, and could not be seized in execution for debts of its holder. *Thompson* v. *Adams*, 93 Pa. St. 55; *Pancoast* v. *Gowen*, 93 Pa. St. 66. These were the cases relied on by the Supreme Court of Illinois to sustain its view. Referring to the Pennsylvania decisions in *Page* v. *Edmunds* (p. 603), this Court said:

"It is not certain whether the learned court intended to say that the seat was not property at all, or not property

because it could not be seized in execution for debts. If the former, we cannot concur. The facts of this case demonstrate the contrary. If the latter, it does not affect the pending controversy. The power of the appellant to transfer it was sufficient to vest it in his trustee."

The Court thus held that the question was to be determined by reference to the language of the Bankrupt Act and that the seat was property "which prior to the filing of the petition he [the bankrupt] could by any means have transferred." It declined to limit the definition of property under subdivision (5) to such as the state courts might hold could be seized in execution by judicial process. Subdivision (3), vesting in the trustee title to powers which the bankrupt might exercise for his own benefit, manifests a purpose to make the assets of the estate broadly inclusive. By a construction not unduly strained, subdivision (3) might be held to include a power to transfer a seat on the Exchange, subject to its rules, if it were necessary.

In *Citizens National Bank* v. *Durr*, 257 U. S. 99, we held, following the *Hyde, Sparhawk* and *Page Cases, supra,* that membership in the New York Stock Exchange was personal property, whose situs followed that of the owner, and was taxable where he was domiciled.

Congress derives its power to enact a bankrupt law from the Federal Constitution, and the construction of it is a federal question. Of course, where the bankrupt law deals with property rights which are regulated by the state law, the federal courts in bankruptcy will follow the state courts; but when the language of Congress indicates a policy requiring a broader construction of the statute than the state decisions would give it, federal courts can not be concluded by them. *Board of Trade* v. *Weston,* 243 Fed. 332.

Counsel for petitioners urges that the *Hyde, Sparhawk* and *Page Cases* differ from the one before us, in that the

rules of the associations there under consideration provided specifically for a sale of the seat and a preferred distribution of the proceeds to the creditor members, whereas here there is no sale provided for at all, at the instance of the Board or its members who are creditors. Their only protection is in the power to prevent a transfer as long as the member's obligations to them are unperformed. We do not think this makes a real difference in the character of the property which the member has in his seat. He can transfer it or sell it subject to a right of his creditors to prevent his transfer or sale till he settles with them, a right in some respects similar to the typical lien of the common law, defined as "a right in one man to retain that which is in his possession belonging to another, till certain demands of him the person in possession are satisfied." *Hammonds* v. *Barclay*, 2 East, 235. *Peck* v. *Jenness*, 7 How. 612, 620. The right of the objecting creditor members differs, however, from the common law lien, in that the latter, to exist and be effective, must deprive the owner of possession and enjoyment, whereas the former is consistent with possession and personal enjoyment by the owner, and only interferes with, and prevents, alienation.

We are brought then to the contention that petitioners are adverse claimants, and are entitled to be heard in a plenary suit. This turns on the question who was in possession of the seat. If the bankrupt was in possession when the petition in bankruptcy was filed, then the authorities leave no doubt that the possession passes to the trustee and that his possession justifies the District Court in determining the validity of the liens claimed in a summary proceeding by a rule to show cause against the claimants. *Hebert* v. *Crawford*, 228 U. S. 204; *Babbitt* v. *Dutcher*, 216 U. S. 102; *Murphy* v. *Hofman Co.*, 211 U. S. 562; *Lazarus* v. *Prentice*, 234 U. S. 263, 266; *Clay* v. *Waters*, 178 Fed. 385, 392.

The petitioners argue that a seat in the Exchange, even if it be property, is incapable of manual possession, that it is really only a chose in action, and that the bankrupt or his trustee is no more in actual possession of it for the purposes of summary jurisdiction than the trustee would be in manual possession of a debt, to enforce the payment of which the trustee must certainly bring a plenary action against the resisting debtor. Membership on the Board of Trade is different from a mere chose in action, like a simple claim or debt asserted against another and only to be enjoyed after its satisfaction or enforcement. It is a continuously enjoyed "incorporeal right". *Hyde* v. *Woods, supra.* The Board of Trade is the member's trustee while it maintains and holds all its facilities for his use and enjoyment. As long as he has these, he may properly be said to be in possession of them. That creditor members may assert a mere restraint of alienation to enforce their claims does not oust the member's possession or personal enjoyment. By operation of the bankrupt law, the membership passes, subject to rules of the Exchange, to the trustee, for his disposition of it. The trustee does not become a member, but he does come into control of the bankrupt's right to dispose of the membership; and, with the aid of the bankruptcy court, can require the bankrupt to do everything on his part necessary under the rules of the Board to exercise this right. The membership is property, in a way attached to the person of the bankrupt and disposable only by his will. It follows him, therefore, into the bankruptcy court, which is given full equitable jurisdiction over his conduct in respect of his estate, and, therefore, it comes into the custody of that court to be administered by it as part of his estate.

The Board is not in an adverse attitude toward the bankrupt. It holds the membership for the bankrupt in conformity to the rules as to his enjoyment and disposi-

tion of it. We think that the principle of *Bryan* v. *Bernheimer,* 181 U. S. 188; *Mueller* v. *Nugent,* 184 U. S. 1; and *Whitney* v. *Wenman,* 198 U. S. 539, applies here, and that, within those cases, the seat is held by the Board for the bankrupt, and that in bankruptcy the right to dispose of it under the rules passes into the control, and therefore into the possession, of the trustee.

A similar question was before the Circuit Court of Appeals for the Sixth Circuit in *O'Dell* v. *Boyden,* 150 Fed. 731. The membership was in the New York Stock Exchange, personal to the holder, and only to be transferred, under the rules of the Exchange, and by consent of its committee on admissions, to a new member satisfactory to them. It was held that, in bankruptcy, the membership passed into possession of the trustee as assets of the estate and that, being thus in the custody of the court, the claim of one to whom the owner of the seat had previously made an assignment of it to secure a debt, was to be settled in a summary proceeding in the bankruptcy court. Judge Lurton, afterwards a Justice of this Court, in passing on the question of possession, said (p. 737):

"The 'seat' or 'membership' continued to be the 'seat' of Henrotin, [the bankrupt] and was a pecuniary asset which passed to his trustee. It was as much in his custody and possession as such a species of property is capable of. . . . Only through a court of equity can the pecuniary value of such an asset be realized to creditors or assignees. Only by decree *in personam* compelling the bankrupt member can such a transfer of membership be effectuated as will put the buyer in the place of Henrotin as a member. Over him for that purpose the bankrupt court has exclusive control and in this sense, also, may it be said that the 'seat' or 'membership' was *in custodia legis* when the trustee sought the aid of the court to adjudicate the claims and liens asserted by O'Dell."

See also *In re Hoey*, 290 Fed. 116; *Orinoco Iron Co.* v. *Metzel*, 230 Fed. 40.

For the reasons given, we hold that the District Court had jurisdiction to determine the issues arising in respect to the membership by summary proceeding.

This brings us to the merits. The District Court ordered the transfer and sale of the seat free from all the claims and objections of the petitioners. The view of the court was that, because Henderson had duly posted his intention to transfer in May, 1919, and all the objections of creditor members then filed against such transfer had been settled or withdrawn before the petition in bankruptcy was filed against him, the right of the member creditors to object to the transfer had been lost. The rule which is applicable (Section 2 of Rule X) reads in part as follows:

"Every member shall be entitled to transfer his membership when he has paid all assessments due, and has against him no outstanding unadjusted or unsettled claims or contracts held by members of this Association, and said membership is not in any way impaired or forfeited, upon payment of two hundred and fifty dollars, to any person eligible to membership who may be approved for membership by the Board of Directors, after due notice by posting, as provided in Section 1 of this rule. . . . Prior to the transfer of any membership, application for such transfer shall be posted upon the bulletin of the exchange for a least ten days when, if no objection is made, it shall be assumed the member has no outstanding claims against him."

We do not think these last words are intended to operate as a statute of limitations against the making of objections before the Board of Directors to such a transfer after the ten days. The effect of the rule is to warrant the Directors in proceeding, after the ten days, to effectuate the transfer on the assumption that no one entitled

opposes it, and, if the transfer is completed before objection, those who have been silent are, of course, estopped. But if, at any time before the Directors act, otherwise valid objections are brought to their attention, it is too drastic a construction to hold that delay for ten days after notice has worked a forfeiture. To give the rule such a meaning, the intent should be more clearly expressed. The objections of most of the petitioners herein were filed within five days after the petition in bankruptcy and the Board never has acted on the application for transfer. The objections are therefore valid.

The claims of the petitioners are also attacked on the ground that they were debts of Lipsey and Company and not of Henderson, the bankrupt. There is nothing in this. The rules make the agent of a corporation who is a member and does business and makes contracts in its name on the Exchange, subject to discipline for a default in the obligations of the corporation. This impairs the membership of the agent and prevents transfer under Section 2, Rule X.

Nor is there any weight to the argument that, as the preference claims of petitioners were not asserted until after bankruptcy proceedings were begun, the transfer to the trustee was rendered free from their objection. Such a claim was negatived in *Hyde* v. *Woods, supra.* The preference of the member creditors is not created after bankruptcy. The lien, if it can be called such, is inherent in the property in its creation, and it can be asserted at any time before actual transfer. Indeed, the danger of bankruptcy of the member is perhaps the chief reason, and a legitimate one, for creating the lien.

We think, therefore, that the District Court and the Circuit Court of Appeals erred on the merits of the case. The claims of the petitioners amount to more than sixty thousand dollars, and these must be satisfied before the trustee can realize anything on the transfer of the seat for the general estate.

The decrees of the Circuit Court of Appeals and the District Court are reversed, and the case is remanded to the District Court to proceed in conformity with this opinion.

Reversed.
